

STATE OF NORTH DAKOTA
PUBLIC SERVICE COMMISSION

Sequoia Energy US Inc. :
150 MW Border Winds Energy : Case No. PU-08-797
Project - Rolette County :
Siting Application :

TRANSCRIPT OF
PUBLIC HEARING

Taken At
14 First Street Southeast
Rolla, North Dakota
November 3, 2009

BEFORE ALLEN C. HOBERG
-- ADMINISTRATIVE LAW JUDGE --

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COMMISSION.

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1 (The following proceedings were had and
2 made of record herein, commencing at 10:32 a.m.,
3 Tuesday, the 3rd day of November, 2009:)

4 JUDGE HOBERG: We're going to start the
5 hearing now. For the record, it's about 10:30 a.m.
6 on November 3, 2009. Can you all hear me back
7 there? Raise your hand if you can't hear me.
8 Everybody can hear. Good.

9 This is the time and place scheduled in
10 the City Commission Hearing Room in Rolla, North
11 Dakota, for the administrative hearing in the
12 matter of the siting application of Sequoia
13 Energy US Incorporated.

14 Would everybody please shut off their cell
15 phones and electrical devices so we have a good
16 hearing today? Thank you very much.

17 In September of this year the Office of
18 Administrative Hearings received a request from the
19 Public Service Commission to provide an
20 administrative law judge to preside in this matter.
21 For the record, my name is Allen Hoberg. I'm the
22 duly designated hearing officer for this hearing
23 today.

24 We'll take appearances from the parties
25 and Commission staff, first starting with the

1 applicant, Sequoia.

2 Mr. Morrison, please.

3 MR. MORRISON: Judge Hoberg, my name is
4 John Morrison, P.O. Box 2798, Bismarck, North
5 Dakota. I'm with Crowley Fleck PLLP in Bismarck,
6 and I'm representing Sequoia Energy US Inc. in this
7 matter.

8 JUDGE HOBERG: And who do you have at the
9 table with you, please?

10 MR. MORRISON: And we also have with us
11 the gentlemen who we're going to use as witnesses
12 today. That's Ian Witherspoon and Rob Bouta. They
13 will be the two witnesses.

14 JUDGE HOBERG: Thank you, Mr. Morrison.

15 Ms. Bendish, please.

16 MS. BENDISH: Annette Bendish, legal
17 counsel for the Public Service Commission. With me
18 at the table is Jerry Lein, an analyst with the
19 Public Service Commission.

20 JUDGE HOBERG: Thank you, Ms. Bendish.

21 And as I understand it, there's no
22 intervenors in this matter today?

23 MS. BENDISH: There's no intervenors, and
24 because Commission staff is not taking an advocacy
25 role in this proceeding, I would ask that Mr. Lein

1 be allowed to ask the witnesses question instead of
2 filtering them through counsel.

3 JUDGE HOBERG: Your request is granted.

4 Is there anyone in the audience today --
5 there's a big audience today and the Commission is
6 glad to see that, I'm sure. Anyone in the audience
7 who may have information to present to the
8 Commission either as a proponent of the application
9 or as a protestant of the application that wishes
10 to testify before the Commission today? If -- if
11 there is anybody like that, please raise your hand.
12 The Commission encourages public participation, so
13 if anybody knows at this time that they want to
14 present testimony, give information to the
15 Commission about this application, please raise
16 your hand at this time. Okay. We have one person.

17 I'm going to pass a sign-up sheet around.
18 Maybe we can start that right now, Mr. Lein. The
19 Commission would like to have you sign your name.
20 Everybody that's in attendance today that's not up
21 at the table here, if you could please sign your
22 name and indicate on there if you'd like to present
23 information, give testimony to the Commission
24 today. And I'll announce later in the proceedings
25 when that testimony will be given, so I'll make

1 sure that we get you up here.

2 Of course, to my right are members of the
3 Public Service Commission. To my right,
4 Commissioner Brian Kalk; Commission Chairman, Kevin
5 Cramer; and Commissioner Tony Clark. I'm going to
6 shortly give a brief summary of how we got here
7 today and then I'll call on them for opening
8 comments.

9 Just briefly, on October 24 of 2008
10 Sequoia Energy filed an application for a
11 certificate of site compatibility to authorize
12 construction of a 150 megawatt Border Winds Energy
13 Project consisting of up to 66 wind turbine
14 generators and associated facilities in Rolette and
15 Towner Counties, North Dakota.

16 On September 25 of this year Sequoia
17 revised its application changing the Border Winds
18 Project area to entirely within Rolette County.

19 The Commission finds the application is
20 complete conditioned on the filing of final wind
21 turbine locations.

22 On September 29 of this year the
23 Commission issued a Notice of Filing and Notice of
24 Hearing. The public hearing that we're at today
25 was scheduled by that notice in the City Commission

1 Room in Rolla.

2 And the issues specified in that notice
3 are as follows, and these are the only issues for
4 the hearing today:

5 Will the location, construction and
6 operation of the proposed facilities produce
7 minimal adverse effects on the environment and upon
8 the welfare of the citizens of North Dakota?

9 Secondly, are the proposed facilities
10 compatible with the environmental preservation --
11 preservation and the efficient use of resources?

12 And, third, will the proposed
13 facilities -- facility locations minimize adverse
14 human and environmental impact while ensuring
15 continuing system reliability and integrity and
16 ensuring that energy needs are met and fulfilled in
17 an orderly and timely fashion?

18 Those are the issues for the hearing
19 today.

20 At this time I'll call on the
21 Commissioners, starting with Commissioner Clark,
22 who has the electric generation and transmission
23 portfolio. Commissioner Clark, please.

24 COMMISSIONER CLARK: Thank you, Judge
25 Hoberg.

1 And thank you for all being here today.
2 These are -- these are truly remarkable times in
3 North Dakota when we talk about energy development
4 and the amount of development that's taken place.
5 I've been on the Commission for about nine years
6 now, and I can tell you that in about the first
7 five years of that -- that time on the Commission,
8 you could probably count on one hand the number of
9 pipeline cases, transmission line cases, wind farm
10 siting cases and other energy facility-type cases
11 that the Commission sited.

12 Now, since then we've seen literally
13 dozens of applications and held numerous hearings
14 just like this, be it with wind farms or pipelines,
15 transmission lines, and it's all related to the
16 tremendous resources that we have here in North
17 Dakota and what the rest of the country needs.

18 Now, as state officials and as North
19 Dakotans, I suppose all of us on the Commission
20 can't help but be excited and interested about what
21 this means for our state, the level of investment
22 that it means for our state, but on the other hand
23 as Commissioners, we have this -- this separate
24 duty under state law, which is that we have to
25 ensure that the way that energy development takes

1 place is done in a responsible manner, that it's
2 done in such a way that it protects our human and
3 our cultural and our environmental resources, and
4 that's really what this hearing is about today is
5 to establish that record.

6 With regard to establishing the record,
7 just a few notes. I hope that -- that if you do
8 wish to give the Commission some information, that
9 you do it. Don't feel shy at all about getting up
10 and testifying.

11 The -- one of the things if you haven't
12 been to one of these particular types of
13 proceedings before that you'll notice is they tend
14 to be fairly formal. And the reason that they are
15 formal isn't because we want to intimidate people
16 from coming up and speaking. The reason is because
17 under the law it's an administrative action that
18 we're taking here today, and so any decision that
19 the Commission makes under the law has to be done
20 with sworn testimony, has to have cross-examination
21 available and has to -- the information that the
22 Commission makes its decision on has to be built
23 here at the hearing today.

24 So if you have anything that you want to
25 tell us, please do it here today because it's not

1 like a City Commission proceeding or legislative
2 proceeding or something like that where you have an
3 opportunity outside of this hearing to chat with us
4 and give us information on the record. So we
5 really do want to hear from you, even though it's
6 perhaps a little bit more formal than you may be
7 used to.

8 But, again, your -- your attendance here
9 today, really the great turnout that is here today
10 speaks a lot to how important this is to the area,
11 and we do want to hear from you.

12 Before I turn it over to my fellow
13 Commissioners, I want to welcome a couple of -- and
14 recognize a couple of former colleagues of mine in
15 the House and friends, Merle Boucher and Tracy Boe.
16 I saw Tracy earlier. Is he -- there he is.
17 Welcome, Representatives. Good to have you here.

18 JUDGE HOBERG: Thank you, Commissioner
19 Clark.

20 Commissioner Cramer, please.

21 COMMISSIONER CRAMER: Thank you, Your
22 Honor, and thanks all of you for being here.

23 Your very presence here serves as
24 testimony to how important this is to your
25 community, and it's -- it's really quite

1 heartwarming.

2 Tracy, by the way, your wife called and
3 said if you don't get all the beans off while the
4 sun is shining, you're in trouble. So if you need
5 to testify early, we welcome that. We'll
6 accommodate that.

7 This is really fun for me for a number of
8 reasons, not the least of which is this is my
9 hometown. I spent the first five years of my life
10 in Rolla, lived in a duplex next to -- to people
11 who still live here in town, of course, the
12 McAtees. And my dad was a lineman for Baker
13 Electric when it was still Baker Electric. Worked
14 with Ray Hanson. And in those days you used to be
15 able to go out on a trouble call with your dad, so
16 I used to watch him climb poles around here quite a
17 bit.

18 I welcome, as well, Leader Boucher and
19 Representative Boe. It's good to have them here.
20 The Leader and I talk about Rolette County a lot in
21 the Capitol, don't we, Merle? Yeah, we do. He
22 keeps me up-to-date.

23 At any rate, we really do welcome your
24 input. Not just welcome it, we encourage it, even
25 admonish you to participate. If there's anything

1 on your mind or your heart or if you have evidence
2 to present, it's really important that you do it
3 here today. There is no question that -- that's
4 bad and there's no comment that's not welcome. So
5 we appreciate that.

6 You know, when I joined the Commission six
7 years ago, I think there were five megawatts of
8 commercial energy -- wind energy being produced in
9 North Dakota. By the end of this year there will
10 be over 1100. And there are about 5,000 megawatts
11 in our docket for -- for development at some point
12 in the future and who knows how much more there
13 might be? But it is a remarkable time.

14 As Tony said, it is our job not only to
15 advocate for good energy development in North
16 Dakota, but more importantly to make sure that the
17 energy development that is being done in North
18 Dakota is done well and done right and done in a
19 way that does have minimal adverse impact on people
20 and cultural and natural resources that are as
21 precious a commodity to us as are our minerals and
22 our wind.

23 So we're here to protect that. And you as
24 citizen participants in this hearing help us do
25 that -- do that very well. So I always say the

1 best part of public life is the public, and it's
2 great to see so many of you here today.

3 Thank you, and we look forward to a very
4 thorough hearing.

5 JUDGE HOBERG: Thank you, Commissioner
6 Cramer.

7 Commissioner Kalk, please.

8 COMMISSIONER KALK: Well, I also just want
9 to echo the thoughts of my fellow Commissioners.
10 Thanks for coming out here today.

11 I have to keep reminding myself -- the
12 court reporter, she told me to slow down when I
13 talked the last time. I get going too fast, so
14 I'll try to do that.

15 But I -- I think it's kind of interesting
16 that Kevin grew up right here in Rolla and I grew
17 up just west of here in the Turtle Mountains and
18 Bottineau, so I don't know if there's some
19 significance that both of us grew up here. Merle,
20 did you have something to do with us getting on the
21 Commission? I don't know. Merle carries a lot of
22 weight. But thanks to the legislators for being
23 here. You've got good folks here representing you.

24 The -- you know, what's important to me, I
25 guess, is just what you've also already heard, is

1 that we hear the good and the bad about all kinds
2 of development because, you know, Tony's been on
3 the Commission for nine years, Kevin's been there
4 for six years, I've been here for a year. And the
5 reason I wanted to be on the Commission is to be
6 part of the discussion of the development of energy
7 in our state, whether it's wind or oil or coal or
8 natural gas. We want to have responsible
9 development.

10 You know, growing up in this part of the
11 state, we want to make sure we preserve the way we
12 have our farming and our ranching and find that
13 nice blend of energy development and meeting the
14 needs. So that's why it's so important that all of
15 you take time to give us your thoughts because, as
16 Tony said, you know, don't be intimidated by it.
17 We want to hear everything about this.

18 And the last thing I guess I'd leave you
19 with is that, you know, growing up in Bottineau, we
20 came to Rolla a lot and we played football, and we
21 never won a football game against Rolla. And I
22 hear now that Rolla is playing Langdon for the
23 semi-championship game, so I'm glad to see the
24 community's carrying on that tradition and look
25 forward to hearing your thoughts today.

1 JUDGE HOBERG: Thank you, Commissioner
2 Kalk.

3 Along those lines of formality, I'm going
4 to explain the hearing procedure today that we're
5 going to follow. As can be expected, I'm going to
6 call on the Applicant, Mr. Morrison, to present the
7 Applicant's case in this matter. And he's
8 indicated that he's calling two witnesses, and
9 those witnesses will answer questions by
10 Mr. Morrison, and then I'll give Commission counsel
11 an opportunity to ask those witnesses questions.
12 Then the Commission will have an opportunity to ask
13 some questions. Following that, I'll entertain
14 such further questions of the witnesses as may be
15 necessary.

16 As indicated, the Commission staff is not
17 presenting a case today, so following the
18 Applicant's presentation of their case, I'm going
19 to call on public testimony, anyone in the
20 audience, and we've had one -- one person indicate
21 that he wishes to testify. And, of course, as
22 you've heard from the Commission, the Commission
23 encourages testimony.

24 So think about it, and if you have
25 something you want to present to the Commission,

1 say to the Commission in the way of information,
2 we'll have you come up -- don't be intimidated by
3 coming up to the podium here, but we need to have
4 you at a microphone so we can hear you.

5 And if you do testify, I'll have to give
6 the Applicant and the Commission staff and the
7 Commission an opportunity to ask you questions, but
8 don't let that deter you. That's part of the
9 formality of the hearing.

10 When we've completed that portion, I'll
11 then ask Mr. Morrison if he has anything further he
12 wishes to present in rebuttal in regard to this
13 matter. He may or may not have anything further he
14 wishes to present.

15 After all of the evidence is presented,
16 I'll turn the matter back over to the Commission.
17 They won't be reaching a decision today. They'll
18 review all of the evidence later. And they're
19 charged with issuing findings of fact and
20 conclusions of law and an order in regard to this
21 matter, whether to issue, deny or take other
22 appropriate administrative action in regard to the
23 application.

24 If the Applicant doesn't agree with the
25 decision of the Commission, they may have appeal

1 rights or other rights under the Administrative
2 Agencies Practice Act or under the rules of the
3 Commission.

4 Again, I stated the three issues for the
5 hearing today. Those will be the three issues that
6 we discuss today. The burden of proof in this
7 matter is on the Applicant to show by the greater
8 weight of the evidence that it's entitled to the
9 application it is seeking.

10 Any questions about the procedures today,
11 Mr. Morrison?

12 MR. MORRISON: No.

13 JUDGE HOBERG: Ms. Bendish?

14 MS. BENDISH: No, Your Honor.

15 JUDGE HOBERG: Anybody in the public have
16 any questions about the procedures we're following
17 today? And, again, when we get to that point when
18 we're taking public input, we'll probably take a
19 little recess and then I'll see if there's anybody
20 else that wishes to present testimony.

21 Mr. Morrison, did you want to make an
22 opening statement?

23 MR. MORRISON: Very briefly.

24 Judge Hoberg, members of the Commission,
25 thank you for the opportunity to be here today. As

1 I indicated earlier, we have two witnesses. I
2 anticipate they'll be fairly brief.

3 Mr. Witherspoon is going to testify about
4 the business aspects, who Sequoia is, what the
5 project is, why it's where it is and that type of
6 information.

7 JUDGE HOBERG: Excuse me a second. Can
8 you all hear back there? Are you all hearing that?
9 Okay. Good.

10 MR. MORRISON: And Mr. Bouta then will
11 talk about the environmental reviews and other
12 similar reviews that have been done and the likely
13 environmental effects and other effects of the
14 project on the local community and environment.

15 And with that, our first witness would be
16 Ian Witherspoon.

17 JUDGE HOBERG: All right. I'm required by
18 law to admonish witnesses and I'm required -- this
19 is for the benefit of anybody that's going to
20 testify today. I'm required by law to tell all
21 witnesses that the maximum penalty for perjury in
22 this state is a Class C felony, punishable by a
23 maximum five years imprisonment, \$5,000 fine, or
24 both. And, of course, perjury is essentially
25 telling the truth -- or not telling the truth in a

1 hearing such as this.

2 (Witness sworn.)

3 JUDGE HOBERG: Thank you.

4 MR. MORRISON: Thank you.

5 **IAN WITHERSPOON,**

6 having been first duly sworn, was examined and
7 testified as follows:

8 **DIRECT EXAMINATION**

9 **BY MR. MORRISON:**

10 Q. Mr. Witherspoon, for the record would you
11 give us your name, give us your business address
12 and tell us by whom you're employed and in what
13 capacity?

14 A. Ian Witherspoon. Business address is 259
15 Portage Avenue, Winnipeg, Manitoba, Suite 210. My
16 position with the company is the manager of project
17 development and responsible for all aspects of
18 developing projects from site initiation to
19 preconstruction.

20 Q. Can you give us a brief description or
21 some background information on Sequoia and tell us
22 who Sequoia is and a little bit about what the
23 business of Sequoia is?

24 A. Sequoia Energy US is a 100-percent-owned
25 direct subsidiary of Sequoia Energy Inc. Our head

1 office is in Winnipeg, Manitoba, Canada.

2 We presently are involved in over 70
3 active sites across the center of North America,
4 including in Wyoming, Montana, Kansas, North
5 Dakota, New Mexico, Texas, Oklahoma, Ontario,
6 Manitoba, Saskatchewan, Alberta and British
7 Columbia.

8 We are majority owned by Good Energies
9 Investments, which is a private equity investor in
10 renewable energy projects. They have invested
11 approximately \$6 billion in solar wind and green
12 building companies within the world.

13 Sequoia has, as I said, a head office in
14 Winnipeg and also has offices in North Dakota,
15 Montana, Colorado and British Columbia, Canada.

16 We perform a variety of turnkey project
17 operations from site selection and research to
18 project financing and project operation.

19 We were the primary developer of the
20 100 megawatt wind farm at St. Leon, Manitoba, which
21 is approximately 90 -- 90 miles northeast of Rolla.
22 That project achieved commercial operation in 2006.

23 Q. Thank you.

24 MR. MORRISON: Judge Hoberg, I'm going to
25 have this witness identify a few of the exhibits

1 because we'll use them in his testimony and it will
2 just make it flow a little better.

3 Q. (MR. MORRISON CONTINUING) So, Ian, first
4 I'm going to hand you two exhibits. And we
5 provided the official exhibits to the court
6 reporter. I believe the Commissioners, all the
7 staff already has these exhibits.

8 But will you tell us what have been marked
9 as Exhibits 1 and 2?

10 A. Exhibit 1 is the project layout indicating
11 turbine locations, roads, underground cable
12 network, substation and collector station,
13 operation and maintenance building and the setbacks
14 from the occupied residences. We also have a
15 larger copy up behind us.

16 Exhibit 2 is the project layout again but
17 showing our -- showing exclusion and avoidance
18 areas and -- mapped and legend on the left.

19 Q. Now, both of those maps have been prepared
20 by Westwood Professional Services; is that correct?

21 A. That's correct.

22 Q. But you reviewed them and are you
23 satisfied that they accurately show the current
24 layout of the projected project?

25 A. Yes, they do.

1 Q. And then can you also tell us what we've
2 marked -- or identify what we've marked as
3 Exhibit 3 and Exhibit 4?

4 A. Exhibit -- Exhibit 3 is our application as
5 of October 23, 2008, that I sent into the Public
6 Service Commission.

7 And Exhibit 4 is the supplement --
8 September 25, 2009, supplement to the application,
9 and it includes the revised Exhibits 1 through 18.

10 MR. MORRISON: Judge Hoberg, we're going
11 to use a -- the subsequent witness to identify the
12 remaining environmental kinds of reports, but with
13 that we would offer at this time Exhibits 1 through
14 4.

15 JUDGE HOBERG: Any objection to Exhibit --
16 Exhibits 1 through 4?

17 MS. BENDISH: I have no objection. Just
18 to clarify which maps we're referencing as
19 Exhibit 1 and Exhibit 2, that's Exhibit 1 and
20 Exhibit 2 that are part of Commission Docket No.
21 21; correct?

22 MR. MORRISON: Yes. They were filed last
23 week, I believe.

24 MS. BENDISH: Thank you.

25 JUDGE HOBERG: And Exhibits 3 and 4 are

1 not part of that Docket 21, are they?

2 MR. MORRISON: Not part of Docket 21.

3 They have been filed with the --

4 JUDGE HOBERG: Right.

5 MR. MORRISON: -- Commission, though.

6 JUDGE HOBERG: Right.

7 MR. MORRISON: Right.

8 JUDGE HOBERG: Okay.

9 Exhibits 1 through 4 are admitted.

10 MR. MORRISON: Thank you.

11 Q. (MR. MORRISON CONTINUING) Ian, can you
12 give us a little background about the Border Winds
13 Wind Energy Project and a little description of
14 what that project is, please?

15 A. We -- we began working in this area
16 approximately fall of 2004 doing site selection,
17 wind data collection and some of the environmental
18 work through Westwood Professional Services.

19 The project area is approximately 52 and a
20 half square miles within -- all within Rolette
21 County. And the south boundary of the project
22 would be approximately three miles north of the
23 City of Rolla, west boundary being a line drawn
24 north of the City of St. John to the U.S./Canada
25 border, the north boundary being the U.S./Canada

1 border, and the east boundary the Rolette/Towner
2 County boundaries.

3 We're proposing up to 66 turbines, each
4 with a nameplate capacity of 2.3 megawatts and a
5 total project nameplate capacity of approximately
6 150 megawatts.

7 Assuming a net capacity factor of between
8 37 and 40 percent, the projected annual average
9 output is estimated to be between 486,000 and
10 526,000 megawatt hours.

11 The project will also include a collector
12 system of underground cables and a collector
13 station, an operation and maintenance facility and
14 a substation to connect to the 230 kilovolt Xcel
15 transmission line located approximately two miles
16 east of town -- or east of the city of Rolla.
17 Sorry.

18 While the project area is approximately 52
19 and a half square miles, the layout will only
20 occupy about 2 percent of that area.

21 Q. And can you also describe for the
22 Commission what Sequoia sees as the need for this
23 particular project?

24 A. According to a report prepared for the
25 State of North Dakota's Division of Community

1 Services, North Dakota is motivated to become a
2 leading state in wind energy development.

3 In support of this goal, Sequoia Energy
4 offers North Dakota and the Midcontinent Area Power
5 Pool in the MISO region the opportunity to add to
6 capacity adequacy requirements to stabilize
7 wholesale power prices and to provide electricity
8 from a clean, cost-effective, renewable energy
9 facility.

10 If you note in Table 2-1 at page nine of
11 the application, it shows the Mid -- Midcontinent
12 Area Power Pool surplus deficit forecast through to
13 2017, and this shows a substantial deficit in the
14 coming years.

15 The project also supports the objectives
16 of the Federal American Recovery and Reinvestment
17 Act of 2009. The Recovery Act has as some of its
18 goals to achieve a rapid deployment of renewable
19 energy in electric power transmission projects.
20 The power meets the primary purposes of the
21 Recovery Act, which are job -- job preservation,
22 job creation, infrastructure investment, energy
23 efficiency and science, assistance to the
24 unemployment -- unemployed, and state and local
25 fiscal stabilization.

1 Q. Why was the Rolette County area picked as
2 the location for this particular wind power
3 project?

4 A. The site selection was twofold. Our
5 desktop and field studies confirmed that this area
6 had an optimal -- was an optimal site from an
7 environmental, wind resource, transmission and
8 economic perspective.

9 What also was crucial to this area was
10 the -- the work that the Rolla Job Development
11 Authority had already undertaken to collect wind
12 data in this area to show that it was a good area
13 to do wind development in. And we were able to
14 work in partnership with the JDA and use that data
15 and to help move this project forward.

16 Q. Can you give the Commission a brief
17 description of the type of wind technology that you
18 plan to use in the project?

19 A. We're proposing to use the Siemens 2.3-101
20 wind turbine. The 2.3 meaning a 2.3 megawatt
21 nameplate capacity, and the 101 is the windswept
22 rotor diameter, which is 101 meters, which would
23 mean each blade would be approximately 49 meters in
24 length.

25 The hub height is 80 meters on a

1 cylindrical or tapered tubular, steel tower. And
2 the turbine cuts in at a wind speed of 4 meters per
3 second and cuts out at a speed of 25 meters per
4 second.

5 Q. Ian, we've posted on the wall Exhibits 1
6 and 2, which are maps. Maybe using either one of
7 those maps or both, whatever you're comfortable
8 with, do you want to give a little description of
9 the project layout and the design of the project
10 and why the towers are where they are?

11 A. The layout consists of 15 arrays, and by
12 "arrays" I mean rows or strings of turbines. The
13 number of turbines in each of those rows is --
14 ranges from two to seven, maximum of seven in a
15 row.

16 We've also indicated on the layout
17 proposed alternative locations should any of the
18 other ones need to be relocated. I think there is
19 eight or ten of those.

20 Orientation of the turbine rows is
21 generally a southwest to northeast orientation in
22 order to capture the prevailing northwest and south
23 winds.

24 There will be access roads to each turbine
25 in order to facilitate maintenance, and those

1 access roads will come off the county grid roads
2 where required.

3 Each turbine is interconnected by an
4 underground cable -- electrical cable as are each
5 row, and those electrical cables will collect at
6 the collector station near the 230 kilovolt line on
7 the east side of the project.

8 A substation will be required to be built
9 at the 230 kilovolt line in order -- order to
10 connect to the Xcel power line. There will be an
11 operations and maintenance building located in the
12 southeast area of the project.

13 Q. And can you also describe for us the
14 setbacks that Sequoia has used in designing this
15 project? What types of setbacks do you try to
16 comply with?

17 A. When the -- when the project layout was
18 designed, a setback distance of 500 meters or
19 1,640 feet was used for setbacks from occupied
20 structures. And of the 66 proposed turbines 63 are
21 at least at the 1,640-foot distance from building
22 sites.

23 Of the three turbines that are not,
24 turbine C1 is 1,515 feet from an occupied
25 residence, K-1 is at 1,600 feet, and M1 is

1 1,515 feet. So those distances are still greater
2 than 400 meters or a quarter of a mile.

3 We also used a setback distance of 1.1
4 times the turbine height to locate from property
5 boundaries, transmission lines, roads and railways.
6 And 1.1 times the turbine height is approximately
7 471 feet.

8 Q. Now, I believe in the application we may
9 have referred to that as a 460-foot setback; is
10 that correct?

11 A. That's correct. That was based on a
12 95-meter rotor and so it has been changed to the
13 101-meter distance.

14 Q. And it's still the 1.1 times the rotor.
15 It's just you've changed your equipment so that's
16 changed the setback.

17 A. That's correct.

18 Q. And you've complied with that 471-foot
19 setback?

20 A. Yes. We've -- we've also included a
21 quarter-mile buffer from U.S. Fish and Wildlife
22 Service waterfowl production areas.

23 Q. Let's talk specifically about one
24 location. AltN I think is the one. There's one
25 location, I understand, that's actually

1 approximately 700 feet from an occupied trailer
2 house; is that correct?

3 A. That is correct. And we are taking
4 measures to move it to the proper distance.

5 Q. So you essentially won't be utilizing that
6 alternate location?

7 A. No, we won't.

8 Q. Okay. Why don't you give us also a little
9 description of the construction process, what
10 you'll be doing to construct the wind project.

11 A. Construction will consist of improving
12 existing access roads in -- within the project site
13 to facilitate movement of equipment and turbine
14 parts. Construction of roads adjacent to where the
15 wind turbines will be located to allow construction
16 and continuing service of those wind turbines.
17 There will be clearing and grading for turbine
18 foundations and installation.

19 Trenching will take place for the
20 underground cabling between the turbines and to the
21 collector site. An installation of the on-site
22 feeder system for connecting all the strings and in
23 conjunction with the substation.

24 There will be installation of the wind
25 turbines and permanent meteorological towers.

1 Installation of any site fencing and security that
2 is going to be required. And -- and the
3 post-construction restoration and vegetation of
4 disturbed land when construction activities have
5 completed.

6 Q. Can you describe for us the status of the
7 acquisition of easements or other property rights
8 that you need to construct and operate this
9 project?

10 A. We -- we currently have all the easements
11 required in order to do the project.

12 Q. And what is the process that you'll follow
13 to commission the project once the construction has
14 been completed?

15 A. Once completed, inspection and testing
16 will occur for each component on the wind turbines,
17 as well as the communication system, meteorological
18 system, obstruction lighting, high voltage,
19 collector and feeder system and the SCADA system.

20 JUDGE HOBERG: Excuse me. Everybody still
21 catching all this back there? Everybody hearing
22 okay?

23 Okay. Thank you. Mr. Morrison, please.

24 MR. MORRISON: Thank you.

25 Q. (MR. MORRISON CONTINUING) Will you also

1 describe for us the maintenance schedule or how the
2 towers on the project are going to be maintained
3 once the project does become operational?

4 A. The project is expected to have a lifetime
5 of 25 to 30 years for the first turbines installed.
6 During this period the project will be operated and
7 maintained by a team of approximately 15 on-site,
8 permanent staff.

9 The operations and maintenance building
10 will be situated where all the necessary equipment
11 will be housed to perform regular maintenance,
12 including vehicles, tools, spare parts and some
13 consumables.

14 Monitoring of the turbines will also occur
15 at the operation and maintenance building using the
16 SCADA system.

17 Routine operations include monitoring and
18 control of the wind turbines from a centralized
19 computer in the operations building and resetting
20 the turbine controls and restarting turbines after
21 any outages from that building.

22 Wind turbine performance will be analyzed
23 for preventative maintenance and for any
24 operational and performance improvements. It is
25 anticipated that the first five years of operation

1 maintenance will be conducted by the manufacturer
2 during the warranty period.

3 Q. And what's the current construction
4 schedule for this project?

5 A. We are projecting to start the
6 construction June of 2010 provided we achieve all
7 construction -- preconstruction permits and
8 approvals.

9 We anticipate construction to take
10 approximately 18 months with testing and
11 operating -- operations to begin early 2011 and
12 first commercial operation in mid to late 2011.

13 Q. Can you tell us what the status is of any
14 contracts or discussions for the sale of the power
15 to be generated by this project?

16 A. We are currently in discussion with --
17 with a few of the companies that are purchasing
18 power within the region. Right now due to the --
19 to the level of negotiation and discussion with
20 those power offtakers, we are unable to provide too
21 much detail or name on those companies because of a
22 confidentiality agreement.

23 Q. But you would be willing to provide
24 information as to that -- those contracts once they
25 are completed; is that correct?

1 A. Yes. Once they are completed, we can
2 provide that information.

3 Q. And what's your total estimated cost of
4 the project?

5 A. The cost of the project is estimated to be
6 just over 360 million.

7 Q. And, finally, can you describe for us the
8 process that Sequoia now intends to undertake for
9 decommissioning when the life of the project ends?

10 A. For decommissioning the project we are
11 under contractual obligation to the landowners to
12 remove all wind power facilities and underground --
13 any underground infrastructure to a depth of
14 48 inches. Sequoia will remove -- excuse me. And
15 restore the area to substantially the same physical
16 condition as preconstruction.

17 We're committed to the decommissioning
18 conditions that are also contained in the easements
19 and the Public Service Commission's regulations.

20 Q. And, Ian, it's correct that Sequoia has
21 filed with the Commission a signed certification of
22 some matters that the Commission staff requested
23 prior to this hearing; is that correct?

24 A. That's correct.

25 Q. And Sequoia remains committed to complying

1 with that certification?

2 A. That's correct.

3 MR. MORRISON: With that, I don't have any
4 further questions of this witness.

5 JUDGE HOBERG: Thank you, Mr. Morrison.

6 Ms. Bendish, do you have any questions of
7 Mr. Witherspoon?

8 MS. BENDISH: No, Your Honor.

9 JUDGE HOBERG: Mr. Lein, do you have
10 any --

11 MR. LEIN: Yeah.

12 **EXAMINATION**

13 **BY MR. LEIN:**

14 Q. I would ask -- you said there was one
15 alternate location, did you say within 700 feet of
16 a mobile home, and what number is that on the map?

17 A. It's alternate N.

18 Q. Alternate N. And it was 700 feet; right?

19 A. Yeah.

20 MR. LEIN: Okay. And that's all the
21 questions I have. Thanks.

22 JUDGE HOBERG: Thank you, Mr. Lein.

23 Commissioner Clark, please.

24 COMMISSIONER CLARK: Just a couple.

25 Thanks.

EXAMINATION

BY COMMISSIONER CLARK:

Q. The interconnection agreement that you mentioned which would be -- is it executed with Xcel or is it something that you're seeking?

A. We are seeking with -- with more than one company at the present time.

Q. Right. I mean not the PPA itself, but the interconnection.

A. Oh, okay. Interconnection would be with Xcel Energy.

Q. Right. And, now, has that interconnection agreement with the line been executed yet or is that --

A. We --

Q. -- something that comes in the future?

A. No. We haven't -- we are waiting for the completion of the facility study for the key position --

Q. Okay.

A. -- and the interconnection agreement would be done subsequent to that.

Q. Okay. Is that a 230 kV --

A. Yes, it is.

Q. -- line? Is that the -- what we sometimes

1 refer to as the Harvey to Glenboro --

2 A. Yes.

3 Q. -- line? Okay. Out of curiosity, to what
4 degree meteorologically does the position of the
5 wind farm have to do with the Turtle Mountains
6 themselves? In other words, does the wind -- I
7 mean it's -- it hugs fairly close to the Turtle
8 Mountains. Does -- is the wind capacity better
9 because of its proximity to it?

10 A. Not being a meteorologist and our met
11 towers don't actually tell us why, they just tell
12 us what it is, I couldn't -- I couldn't tell you if
13 it is or isn't.

14 Q. I was just curious if it's sort of like a
15 funnel or something, you know, that they -- when
16 it --

17 A. It could be.

18 Q. -- comes off the --

19 A. Yeah.

20 Q. -- the ridge. Questions about noise and
21 flicker specifically related to the 2.3 megawatt
22 towers. Should we ask that to you or the next
23 witness?

24 MR. BOUTA: I can take them.

25 THE WITNESS: Okay.

1 COMMISSIONER CLARK: Okay. I'll hold
2 those for later.

3 That's all the questions I have. Thanks.

4 THE WITNESS: Thank you.

5 JUDGE HOBERG: Thank you, Commissioner
6 Clark.

7 Commissioner Cramer, please.

8 COMMISSIONER CRAMER: Sure, just a couple,
9 Your Honor.

10 **EXAMINATION**

11 **BY COMMISSIONER CRAMER:**

12 Q. Thank you, Mr. Witherspoon. You had
13 referenced the Recovery Act as being a -- relevant,
14 I guess. What -- is it -- is that just sort of to
15 bolster your position or did the Recovery Act,
16 itself, have some bearing on choosing to do this
17 project? And if so, are there federal -- is there
18 some federal incentive beyond what was available
19 prior to the Recovery Act that led to this
20 decision?

21 A. No, because we had started the project
22 before the Recovery Act was brought in. But it --
23 it is addressing the needs that were brought
24 forward within the Recovery Act, especially the --
25 the desire to have rapid renewable energy brought

1 on as well as employed -- employing workers and
2 laborers within the country.

3 Q. But there were no additional incentives
4 that --

5 A. No, there were not.

6 Q. -- you were given to do the good work you
7 were already doing?

8 A. No.

9 Q. Okay. Regarding labor, and forgive me if
10 you -- if you answered this, do you intend to use a
11 lot of local labor as well as local contractors or
12 have you thought through that yet when it comes to
13 the construction part of it?

14 A. Yeah. We -- we will be looking for a
15 general build-a-plant contractor to -- to do the
16 project, and encouragement of hiring on local
17 people will be there. Again, it's one of those
18 things where we have to make sure the people are
19 skilled and -- and can work within -- within the
20 construction environment that's going to be here.
21 But, no, definitely local people will be encouraged
22 to be hired.

23 Q. Then just one final question. Have you
24 heard from or had any discussions with any local
25 area applicators, you know, the crop sprayers,

1 anything like that? Has that been part of the
2 consideration at all or have you talked to any?

3 A. Yes, we have had discussion. Originally
4 when we started the project back in 2004, there was
5 discussion then and we have had recent discussion
6 as well. Yeah.

7 Q. Okay. And any concerns expressed or -- or
8 have they been addressed or --

9 A. Well, there's been concerns just simply
10 because of the new structures on the landscape in
11 the areas that they are flying. And we -- we have
12 addressed the concern by offering a willingness to
13 work with them to turn turbines off and turn them
14 in an -- in an orientation that would best suit
15 their flying pattern when they are applying.

16 Q. So that would require obviously some
17 pretty good communication between applicators and
18 your company?

19 A. Yes, it will.

20 COMMISSIONER CRAMER: Thank you very much.
21 I have nothing further. Thank you.

22 JUDGE HOBERG: Thank you, Commissioner
23 Cramer.

24 Commissioner Kalk, please.
25

EXAMINATION**BY COMMISSIONER KALK:**

Q. You know, being the third guy, a lot of your questions come down the way. But back to Tony's point, I can tell you the wind always blows out of the northwest up here. So whatever money you guys spent to study that, I could have told you that. It always blows out of the northwest.

Just, I guess, a general knowledge question for me is that where are your North Dakota offices? You said you have them, but where are they at for the record?

A. We have an office right here in Rolla --

Q. Okay.

A. -- at 113 Main Avenue. And we are in the process of establishing another office at Sherwood.

Q. Sherwood. Any plans -- I think I heard somewhere maybe Bismarck at some point or is that still developing?

A. Yes, we would -- we would like to set up an office in Bismarck. That's right.

Q. Because I guess the -- you know, I'm not an attorney and that's what these folks are for, but, you know, is there anything special with your headquarters being in Winnipeg that might come into

1 play on this in the legal framework as this thing
2 develops?

3 You know, if we're doing a Basin Electric
4 project and something comes up, you know, Basin's
5 right there in Bismarck, there's definitely a
6 direct way to get to those folks.

7 Is there anything special that you're
8 aware of that might come into play with your main
9 office being in Winnipeg?

10 A. Not that I'm aware of, no.

11 COMMISSIONER KALK: Is that -- for my
12 counsel, is that something that we could look at
13 later that we should just -- I don't have -- just a
14 general knowledge point.

15 JUDGE HOBERG: Perhaps Mr. Morrison has
16 some comment on that or --

17 MR. MORRISON: I guess the only comment I
18 would have is while the ownership may be Canadian,
19 the corporation, itself, is a Delaware corporation
20 that's authorized to do business in the state and
21 obviously they're subject to process.

22 COMMISSIONER KALK: Okay. So that's the
23 point I didn't know then. Okay. I think that
24 answers my question.

25 MR. MORRISON: And maybe -- I'm not even

1 sure if they filed that, but -- so maybe I should
2 have Ian just for the record confirm that, in fact,
3 Sequoia is a Delaware corporation and is authorized
4 to do businesses in the state of North Dakota.

5 THE WITNESS: Yes, it has been filed. We
6 are authorized to do business in North Dakota.

7 Q. (COMMISSIONER KALK CONTINUING) Okay.
8 Thank you very much.

9 And the last question, I guess, is kind of
10 a follow-up from Commissioner Cramer's about this
11 is not so much the aerial spraying but on the
12 aviation part of it. You know, I did 20 years in
13 the Marine Corps. I wasn't a pilot but I was a
14 ground guy, and even flying in today, you know,
15 what kind of impact to just the landing field may
16 this have? Is that something that's been looked
17 at?

18 A. Yeah. We -- there is a zoning ordinance
19 for the airport that restricts the -- any turbines
20 from being located within a three-mile radius of
21 the airport, and that -- and that was due to their
22 height restriction from -- from the landing strip.

23 Q. So that's all included in here, that
24 everything --

25 A. It is.

1 Q. -- meets the local airport requirements?

2 A. Yes, it does.

3 Q. And it doesn't require anything being
4 turned off? They can do operations without having
5 to do anything different?

6 A. Yeah.

7 COMMISSIONER KALK: Okay. That's all I
8 have.

9 JUDGE HOBERG: Thank you, Commissioner
10 Kalk.

11 Mr. Morrison, any further questions of
12 Mr. Witherspoon?

13 MR. MORRISON: Nothing further at this
14 time.

15 JUDGE HOBERG: Ms. Bendish --

16 MS. BENDISH: No, Your Honor.

17 JUDGE HOBERG: -- anything further? Any
18 further questions, Commissioners?

19 Thank you, Mr. Witherspoon.

20 Please call your next witness.

21 MR. MORRISON: Our next witness will be
22 Rob Bouta.

23 JUDGE HOBERG: Mr. Bouta, did you hear the
24 admonition I gave earlier in regard to perjury?

25 MR. BOUTA: Yes.

1 (Witness sworn.)

2 JUDGE HOBERG: Thank you.

3 Mr. Morrison, please. Yeah, bring that
4 closer to you perhaps. Yeah. Thank you.

5 MR. MORRISON: Thank you.

6 **ROBIN BOUTA,**

7 having been first duly sworn, was examined and
8 testified as follows:

9 **DIRECT EXAMINATION**

10 **BY MR. MORRISON:**

11 Q. Mr. Bouta, can you give us your name for
12 the record, tell us by whom you're employed and
13 what capacity, and also give us your business
14 address, please.

15 A. My name is Rob Bouta. I'm employed by
16 Westwood Professional Services in -- at 7699
17 Anagram Drive, Edin Prairie, Minnesota, and I'm
18 employed as an environmental -- senior
19 environmental scientist.

20 Q. And can you also give us a little
21 description of your educational and professional
22 background in the environmental consulting field?

23 A. I have a Master's degree in environmental
24 and forest biology from the State University of New
25 York College of Environmental Science and Forestry,

1 a Bachelor's of Science degree with a double major
2 in wildlife management and biology from the
3 University of Wisconsin-Stevens Point, and an
4 Associate's of Applied Science degree in natural
5 resources conservation from the University of
6 Minnesota at Crookston. And I'm certified as a
7 senior ecologist by the Ecological Society of
8 America and as a wetland delineator by the State of
9 Minnesota.

10 Q. And how long have you been acting as an
11 environmental consultant?

12 A. I've been an environmental consultant for
13 19 years with Westwood Professional Services. I've
14 been working on wind projects for approximately the
15 past 5 years, and I've -- I've been in the natural
16 resources, wetland and wildlife management fields
17 for approximately 25 years.

18 Q. And what's your involvement been in this
19 particular project?

20 A. I've been the project manager for all the
21 environmental and cultural resources and permitting
22 aspects of the project and coordinated staff and
23 edited and coordinated preparation of all reports.

24 Q. And you had a great deal of input into the
25 application and the supplement to the application

1 that have already been identified; is that correct?

2 A. That's correct.

3 Q. And you've also been responsible for
4 preparation of some other environmental studies and
5 surveys; is that correct?

6 A. That's correct.

7 Q. I'm going to show you what we've marked as
8 Exhibit 5 and can you tell us what that is?

9 A. That's the Preconstruction Avian Survey
10 and Risk Assessment that was completed based on the
11 field survey of avian species in the spring of
12 2009.

13 Q. And then tell us what Exhibit 6 is.

14 A. Exhibit 6 is the Class III Intensive
15 Cultural Resources Inventory that was completed as
16 a result of the cultural resources field survey
17 that was done in the spring of 2009.

18 Q. And Exhibit 7?

19 A. Exhibit 7 is the Wetland Delineation
20 Report that was completed based on wetland
21 delineation fieldwork in the summer of 2009.

22 Q. And then, finally, Exhibit 8?

23 A. Exhibit 8 is the Rare Species and Natural
24 Community Assessment that was completed based on
25 records of rare species supplemented by fieldwork

1 done in the summer of 2009.

2 Q. And you supervise the preparation of all
3 of those reports; is that correct?

4 A. That's correct.

5 Q. And to the best of your knowledge, are
6 they all true and accurate?

7 A. Yes, to the -- yes.

8 MR. MORRISON: Okay. I'll offer the --
9 excuse me. I'm going to offer into evidence at
10 this time Exhibits 5 through 8.

11 JUDGE HOBERG: Thank you. Any objection
12 to Exhibits 5 through 8?

13 MS. BENDISH: No, Your Honor.

14 JUDGE HOBERG: All right. Exhibits 5
15 through 8 as indicated by Mr. Bouta are admitted.

16 Q. (MR. MORRISON CONTINUING) Rob, why don't
17 we talk first about exclusion areas. Are you
18 familiar with the PSC's determination of exclusion
19 areas and what those exclusion areas are?

20 A. Yes, I am.

21 Q. And were they considered in the locating
22 of this particular project?

23 A. Yes, they were.

24 Q. Why don't you describe the exclusion areas
25 that either are affected -- or are potentially

1 affected by this project. And maybe you want to
2 refer them to a particular table in the application
3 if that helps in your discussion.

4 A. Okay. The table in the application is
5 Table 3.1 on page 11 of the original application,
6 and Table 3.1 is revised on page three of the
7 supplement to the application that was submitted in
8 September of 2009.

9 Of the -- the exclusion areas, the
10 designated national wildlife and natural areas,
11 there are no impacts on those areas. Designated or
12 registered state areas, there are two areas within
13 the 52.5 square mile project area that have either
14 been nominated or are listed on the National
15 Register of Historic Places and in the State
16 Register of Historic Places. Those are the St.
17 John border station, basically the customs office
18 on the Canadian border, which is nominated, and an
19 older structure called the Coghland Castle, which
20 is located roughly in the west central portion of
21 the project area.

22 JUDGE HOBERG: Could you spell that for
23 us? It was Boghland?

24 THE WITNESS: Coghland.

25 JUDGE HOBERG: Coghland.

1 THE WITNESS: It's C-o-g-h-l-a-n-d.

2 JUDGE HOBERG: Thank you.

3 THE WITNESS: Both of those historic
4 structures will be sufficiently avoided by the
5 project, and our -- our lead archeologist has given
6 us the opinion that they will not be affected
7 visually by the project because both of those
8 structures are buffered by trees to some extent.

9 There are no county parks or recreation
10 areas or municipal parks or hardwood draws in the
11 project area.

12 There are prime and unique farmlands in
13 the project area, but the project is not expected
14 to affect more than 0.4 percent of the production
15 of the top five commodity crops in Rolette County.

16 There's no irrigated land in the project
17 area.

18 There's no critical life stage areas for
19 threatened and endangered species in the project
20 area, although there may be threatened and
21 endangered species that actually occur or that have
22 range that overlaps the project area.

23 And we've not identified any impacts on
24 unique, rare animal or plant species, even though
25 there were some records identified by the North

1 Dakota Parks and Recreation Department in
2 conjunction with the project area as a result of
3 their natural heritage database survey.

4 Q. (MR. MORRISON CONTINUING) But those just
5 simply indicated there was potential for those
6 species to be present; is that correct?

7 A. Yeah, they had identified some records of
8 rare species and rare habitats from approximately
9 22 or 23 years ago.

10 Q. And that's one of the issues that was
11 investigated by the surveys you've identified?

12 A. Yes. Those were addressed by Exhibit 8
13 under the rare species and natural community
14 assessment report.

15 Q. So then the only exclusion areas that are
16 potentially impacted are the two historic sites you
17 mentioned that are buffered by trees and adequate
18 distance and the farmland -- prime farmland which
19 has been minimized; is that correct?

20 A. That's correct.

21 Q. Why don't you also then go on and talk
22 about the avoidance areas that are present within
23 the project area.

24 A. Okay. The -- most of the avoidance areas
25 that are listed under the North Dakota Public

1 Service Commission rules aren't actually included
2 in the project area, so I'll just hit on the ones
3 that are included. And the primary one is
4 woodlands and wetlands, and those will be avoided
5 to the extent practicable. We've taken that step
6 by delineating wetlands and mapping wetlands at
7 various levels of detail.

8 And cultural resources -- well, actually,
9 let's see. I'm getting ahead of myself. Those
10 are -- the only real avoidance area in the project
11 area are the woodlands and the wetlands.

12 Q. Okay. Well, let's talk -- you started to
13 mention cultural resources. Why don't you go back
14 to Exhibit 6, and that is your cultural resource
15 inventory that was done on the ground; is that
16 correct?

17 A. That's correct.

18 Q. And did that indicate that there are any
19 cultural resources other than the St. John border
20 station and Coghland Castle you've already
21 discussed that need protection?

22 A. There were seven new archeological finds
23 and prehistoric sites discovered as part of the
24 Class III Intensive Cultural Resources Inventory.
25 However, none of those were considered to be

1 eligible for the National Register of Historic
2 Places.

3 Q. And Westwood has been in contact with the
4 State Historic Preservation Office about that
5 study; is that correct?

6 A. That's correct. The State Historic
7 Preservation Office initially concurred with
8 Westwood's recommendation to initiate this type of
9 study. And as recently as October 13 of 2009 we
10 were in coordination with them concerning our plans
11 to complete and submit this report upon completion
12 of a supplemental field investigation that will be
13 wrapped into the final report.

14 Q. And what supplemental field investigation
15 remains to be done, just generally?

16 A. The -- the alternate turbine locations
17 need to be investigated in the field yet by the
18 cultural resources team as well as the cable routes
19 and the roadways -- access roadways that would
20 connect to those alternate turbines, and also the
21 location of the proposed substation for the
22 interconnection and the O&M facility construction
23 yard location.

24 Q. Why don't we look at then Exhibit 7 for a
25 minute, and can you tell us about the conclusions

1 that you reached in Exhibit 7 with respect to the
2 wetlands delineation and the existence of wetlands
3 in the area?

4 A. As part of the wetland delineation and the
5 wetland delineation report, we delineated in the
6 field with some mapping assistance in cases where
7 the -- the wetland signatures were not visible in
8 the field due to cropping in certain areas, but
9 there were a total of 313 -- or 317 wetlands
10 identified and delineated and mapped within
11 800 feet of the proposed project construction area
12 in an area -- total area that covered about
13 6.5 square miles. Most of those wetlands, 296 of
14 them were isolated wetlands. There were 21
15 wetlands that were connected to streams or creeks
16 or drainages.

17 Q. And is it possible to avoid at least most
18 of these wetlands in construction of this project?

19 A. The vast majority of them will be avoided.
20 There are a number of areas -- I believe initially
21 when we first looked at it, about 15 areas where
22 there will be crossings necessary for access roads
23 to access the turbines that will need to cross over
24 streams and creeks or long, linear drainages, and
25 that's a consequence of two things. One, the

1 abundance of wetlands and stream corridors in the
2 project area; and, two, the interconnected linkage
3 of roadways and cables that's necessary to -- to
4 have an interconnected wind farm.

5 Q. But it would be your intent to minimize
6 those disturbances to the extent practicable; is
7 that correct?

8 A. That's correct.

9 Q. And, again, I think we talked about this a
10 little bit, but Exhibit 8 is your rare species
11 assessment, and that then concluded that none of
12 the species that had been previously identified
13 were currently present in the project area; is that
14 correct?

15 A. None of the species that were previously
16 identified were documented to be present in the
17 project area. They -- as is frequently the case
18 with rare species, it's easier to prove presence
19 than absence. So some of these species, such as
20 the whooping crane, could still occur from time to
21 time in the project area when they migrate through
22 the project area, but the -- a lot of the
23 conclusions concerning the potential impacts and
24 potential presence of the rare species were based
25 on the suitability and availability of habitats

1 rather than actual proof of presence or absence.

2 Q. And did you also consider the Commission's
3 site selection criteria that have been set forth in
4 their rules, regulations and guidelines?

5 A. Yes, we did.

6 Q. Can you tell us what you found with
7 respect to those site selection criteria?

8 A. In terms of agricultural production, the
9 total project for construction of the turbines and
10 the access roads and everything is expected to
11 affect, when you total it all up, all the different
12 components, roughly 100 to 120 acres.

13 For family farms and ranches as discussed
14 previously, the turbines will be set back
15 approximately 1,600 feet from occupied family
16 homes, and lease payments will be made to the
17 landowners who have turbines on their land. And
18 Sequoia staff know more about those particular
19 arrangements than I do.

20 The land in the project area -- none of
21 the land in the project area, to our knowledge, is
22 considered economically suitable for irrigation.
23 The surface drainage patterns and groundwater flow
24 patterns are not anticipated to be affected.
25 Neither is the agricultural quality of the cropland

1 because the soils will be decompacted after
2 construction.

3 The project is not anticipated to affect
4 the availability or adequacy of law enforcement,
5 school systems, government services or general
6 mental healthcare facilities or recreational
7 programs.

8 There will be some effect on
9 transportation facilities and networks particularly
10 due to the increase in vehicle trips and truck
11 traffic during construction. There is not adverse
12 effects projected on retail services. And utility
13 services will be coordinated with the MISO, the
14 Midwest Independent Service Operator, to prevent
15 impacts on the transmission system.

16 Other impacts in terms of local
17 institutions, noise, rural residences, aquifers and
18 human health and safety, things like that basically
19 boil down to the 1600-foot setback which will keep
20 the predicted noise level below 50 decibels or dBAs
21 at residential receptors. And for human health and
22 safety the project will undergo federal aviation
23 permitting to make sure that there's no hazard to
24 air traffic.

25 Animal health and safety, there will be a

1 small number of bats and birds that would be
2 expected to be killed on an annual basis as a
3 result of collisions with wind turbines, and this
4 is fairly common for wind farms in various
5 locations throughout the Midwest.

6 The plant life effects basically boils
7 down to, as I stated earlier, roughly 100 to
8 120 acres of land impact.

9 Temporary housing will be used by
10 construction staff during project construction.
11 And as Ian mentioned earlier, local contractors
12 will be employed to the extent possible and that
13 that can work during construction of the project.

14 And there's no anticipated cumulative
15 effects on -- as a result of the project for plant
16 facilities or other project developments.

17 Q. Okay. Did you also consider the impacts
18 the project will have on the policy criteria
19 established by the Commission?

20 A. Yes, we did.

21 Q. And can you summarize what those impacts
22 are?

23 A. The -- regarding energy, the project will
24 maximize the energy output and -- through
25 optimization of the project layout. Regarding

1 utilization of labor, again, they'll look at the
2 potential for using local labor. No residents are
3 expected to be relocated as a result of the
4 project.

5 The project won't interfere with adjacent
6 land use. And the developer, Sequoia Energy, is
7 working with landowners to accommodate their
8 interests and attitudes about the project.

9 The energy will be transmitted through the
10 Xcel transmission line and sold to a recent -- or a
11 regional utility to be determined.

12 And the impacts of construction will be
13 restored through separating topsoils, storm water
14 pollution prevention plans and soil decompaction
15 following construction.

16 Q. And then can you also summarize what the
17 other impacts to resources are expected to be?

18 A. The demographic impacts will be primarily
19 positive. The land use -- again, it's roughly --
20 construction footprint is roughly 100 to 120 acres
21 spread over the 52.5 square miles.

22 In terms of public services, again, the
23 project will abide by MISO's recommendations for
24 transmission interconnection, human health and
25 safety. Again, the project will meet FAA

1 requirements and permitting.

2 For noise we mentioned that 1600-foot
3 setback from residences and how that would keep the
4 noise level at 50 dBA or below at the residential
5 receptors.

6 Visual impacts will be minimized and the
7 project layout will be laid out and has been laid
8 out in an environmentally sensitive manner.

9 Cultural resources have been assessed
10 within the construction corridors and will continue
11 to be assessed. And most of the -- actually, the
12 rest of the factors have already been discussed to
13 some extent related to the other resources.

14 Q. And basically there are no negative
15 impacts or substantial negative impacts on those
16 remaining resources; is that correct?

17 A. That's correct.

18 Q. Can you also tell the Commission about the
19 status of any other local, state and federal
20 permits that are required for this project?

21 A. Okay. We're still coordinating with the
22 U.S. Fish and Wildlife Service regarding the
23 project footprint that will overlap the wetland
24 easement lands that are lands in which the U.S.
25 Fish and Wildlife Service has easements that

1 protect wetlands, and then we'll be coordinating
2 with them in the next couple days on that subject.
3 We anticipate avoiding wetlands in those areas, but
4 there are some things we need to do to ensure that
5 actually happens.

6 The U.S. Army Corps of Engineers -- the
7 project will require a Section 404 permit for
8 wetland impacts, and we anticipate submitting that
9 permit application in the next few months.

10 The United States Environmental Protection
11 Agency will require a spill prevention, control and
12 countermeasure plan if the O&M facility, the
13 operations and maintenance facility, exceeds the
14 project threshold for aboveground oil storage, and
15 that remains to be investigated.

16 The Federal Aviation Administration
17 determination of no hazard application will be
18 submitted after the micrositing is complete,
19 probably sometime in the next month or so.

20 And we will be reviewing title work for
21 potential overlap with federal farm programs such
22 as federal farm real estate mortgages that are
23 federally insured through the Farm Service Agency,
24 and then there will be some CRP contract --
25 Conservation Reserve Program contract amendments

1 that will be necessary.

2 The Public Service Commission hearing
3 we're obviously at today. The project will require
4 NPDES, National Pollutant Discharge Elimination
5 System. General permitting from the North Dakota
6 Department of Health may require a septic tank and
7 drainfield permit from the Department of Health,
8 and will also require Section 401 water quality
9 certification in conjunction with the U.S. Army
10 Corps of Engineers' wetland permitting. But the
11 water quality certification comes from the
12 Department of Health.

13 The State Historic Preservation Office
14 coordination is in the process and that will be
15 complete before the project construction starts.

16 There are other permits required by the
17 North Dakota Highway Patrol for overweight
18 transportation of construction equipment and
19 materials. That will be obtained prior to
20 construction. And utility permits for roadway
21 crossings from the North Dakota Department of
22 Transportation and Rolette County, we'll coordinate
23 with those road authorities to obtain those
24 permits. And the Rolette County conditional use
25 permit application was submitted yesterday.

1 Q. Also listed in the application, I think
2 Appendix C indicates that there are some additional
3 assessments that have been done to indicate that
4 you have done some mitigative measures, including a
5 microwave interference study and a noise
6 assessment; is that correct?

7 A. That's correct.

8 Q. Why don't we talk then about the -- well,
9 let's do it this way: We've also indicated in the
10 application that we have sent letters to all of the
11 necessary federal and state agencies and local
12 agencies; is that correct?

13 A. That's correct.

14 Q. And have you gotten substantive comments
15 from many of those agencies? Or maybe you just
16 want to identify the ones that you've really gotten
17 substantive comments from.

18 A. Well, roughly about a third of them we've
19 gotten responses from, and those include the
20 Natural Resources Conservation Service, the U.S.
21 Army Corps of Engineers, the U.S. Fish and Wildlife
22 Service, the Job Service of North Dakota, the North
23 Dakota Department of Agriculture, the North Dakota
24 Department of Health, the North Dakota Department
25 of Transportation, the North Dakota Game and Fish

1 Department, the North Dakota Indian Affairs
2 Commission, the North Dakota Office of Attorney
3 General, North Dakota Parks and Recreation
4 Department, Rolette County and Towner County.

5 Q. Now of those is it fair to say that Fish
6 and Wildlife Service is probably the most
7 substantive of the comments that were received?

8 A. Yeah, that's fair.

9 Q. And you're continuing to work with Fish
10 and Wildlife Service to address their concerns; is
11 that correct?

12 A. That's correct.

13 Q. Have any state or federal agencies
14 objected to the wind project at this point in time?

15 A. No.

16 Q. In your opinion if the wind farm is
17 constructed as you've set it forth in the
18 application and as you've discussed today, will
19 there be any significant long-term irreversible
20 effects to the environment or cultural resources?

21 A. Not in my opinion.

22 MR. MORRISON: I don't have any further
23 questions of the witness at this time.

24 JUDGE HOBERG: Thank you, Mr. Morrison.

25 Ms. Bendish, do you have any questions of

1 Mr. Bouta?

2 MS. BENDISH: No, Your Honor.

3 JUDGE HOBERG: Thank you.

4 Mr. Lein?

5 **EXAMINATION**

6 **BY MR. LEIN:**

7 Q. Yeah. I would ask one thing just to
8 clarify. In Table 3.1 in the supplement that was
9 filed on 9-25, we have areas where animals or plant
10 or species are unique or rare to North Dakota would
11 be irreversibly damaged listed as both an exclusion
12 area and then in Table 3.2 as an avoidance area.
13 If I recall right, I think those are exclusion
14 areas. And I'm wondering if we were talking --
15 there's a different caption when it talks about
16 proposed buffer in that column. I'm wondering if
17 we're talking about the same rare plant community
18 as Calcareous Fen, I think it says.

19 A. Oh, the Calcareous Fen.

20 Q. Calcareous Fen. Is this the same --

21 A. That's --

22 Q. Just the same thing?

23 A. Yeah. That's the same plant community and
24 that was --

25 Q. Okay.

1 A. -- inadvertently listed in both tables.
2 You're correct that should have just have been
3 listed as an exclusion area. And just for
4 clarification, the Calcareous Fen that was located
5 by the North Dakota Parks and Recreation Department
6 is west of the project area, and our staff visited
7 that site in the field and found that it did not --
8 the vegetation community at that location was not
9 consistent with what was documented there
10 approximately 22 years ago.

11 Q. Okay. Thanks.

12 The other thing I had questioned was the
13 Rolette County. Did they have any specific
14 requirements or ordinances regarding wind
15 generation, setbacks or anything like that?

16 A. They have the Rolette -- Rolette County
17 Zoning Resolution which requires a conditional use
18 permit for any towers greater than 50 feet in
19 height. Their setback requirements are not
20 specific for wind turbines and because their
21 setback requirements basically went -- the
22 ordinance or the zoning resolution says that towers
23 need to be set back at least 70 feet from the road
24 right-of-ways or in cases where there's not a clear
25 road right-of-way at least 100 feet from the center

1 of the road.

2 And due to the height of the turbines,
3 we're going to -- they will be set back
4 substantially farther than that.

5 MR. LEIN: Okay. Thanks. That's all the
6 questions I have. Thanks.

7 JUDGE HOBERG: Thank you, Mr. Lein.
8 Commissioner Clark, please.

9 COMMISSIONER CLARK: Just a couple.

10 **EXAMINATION**

11 **BY COMMISSIONER CLARK:**

12 Q. I see you've got a number of surveys and
13 background information related to noise and
14 expected noise levels at different distances. Do
15 you have any similar sort of assessments with
16 regard to shadow flicker? It's something that
17 we've heard about more in some of the more recent
18 wind farm siting cases that we have. I guess I
19 didn't see anything in the application at all. But
20 do you have any -- did I miss something? Is there
21 any information on shadow flicker, you know, number
22 of hours expected at given residences, so on and so
23 forth?

24 A. Well, you're not -- you didn't miss
25 anything --

1 Q. Okay.

2 A. -- because we have not completed a shadow
3 flicker study. I agree with you that it's -- it's
4 starting to be raised more often as an issue. At
5 this point in time no one yet has requested a
6 shadow flicker study on this project that I'm aware
7 of.

8 Q. Okay. Could we have a late-filed exhibit
9 that would do that?

10 A. That's something that we could prepare,
11 yeah.

12 Q. Okay. Thank you.

13 JUDGE HOBERG: Mr. Morrison, then that
14 would be a late-filed Exhibit 9 then?

15 MR. MORRISON: Yeah. Do you have a time
16 frame on completion?

17 THE WITNESS: Not at this time. I suspect
18 it -- it would probably be done within a month, but
19 I -- I don't know precisely.

20 MR. MORRISON: I guess as long as perhaps
21 we can coordinate with Ms. Bendish and staff as
22 to -- if the time gets drug out too far, we may say
23 that rather than as a late-filed exhibit, that it
24 would be a condition in the order. Rather than
25 drag the order out too far, the order could be

1 conditioned on completing such an assessment before
2 the project's constructed. But if it can be done
3 within a month, that would seem reasonable to get
4 it incorporated into the order, too, so --

5 JUDGE HOBERG: Is that something they can
6 work out with you, Ms. Bendish?

7 MS. BENDISH: If Commissioner Clark is
8 fine with the possibility of not having it before
9 the order and just conditioned -- putting language
10 in the order to condition it upon that filing.

11 COMMISSIONER CLARK: Sure. We just have
12 to know the right language to have in the order,
13 and we could go back to some previous sitings that
14 we've done that have some pretty extensive comments
15 with regard to what are acceptable standards for
16 number of hours of shadow flicker and we could draw
17 on some of those resources. But either have been
18 used. Fine with me.

19 MR. MORRISON: Hopefully we can get it
20 done and get it incorporated into the order.

21 JUDGE HOBERG: Okay. You'll coordinate
22 that with Ms. Bendish then?

23 MR. MORRISON: Yes.

24 JUDGE HOBERG: Okay. Thank you.

25 Commissioner Clark, please.

1 Q. (COMMISSIONER CLARK CONTINUING) You'd
2 mentioned some of the discussions you've had with
3 the U.S. Fish and Wildlife Service and the whooping
4 crane in particular. Is Sequoia a participant in
5 the habitat conservation plan that's being
6 developed between wind energy developers throughout
7 the Great Plains and the U.S. Fish and Wildlife
8 Service?

9 A. I believe the answer to that question is
10 no, but I would defer to Ian to clarify that. And
11 it's -- I would also clarify that we're aware of
12 that study -- the habitat conservation plan
13 that's -- that's going on. I don't believe --

14 JUDGE HOBERG: Just for the record,
15 Mr. Witherspoon is going to address that question;
16 correct?

17 MR. WITHERSPOON: We participated in a --
18 in a conference in Denver a year and a half ago,
19 but we have not been actively participating in
20 anything further to that conference --

21 COMMISSIONER CLARK: Okay.

22 MR. WITHERSPOON: -- if that's what your
23 question is.

24 COMMISSIONER CLARK: Sure. And it's
25 mainly a liability question for Sequoia as opposed

1 to anything else, I think.

2 Q. (COMMISSIONER CLARK CONTINUING) But
3 moving back to Mr. Bouta, is the -- and we may get
4 some testimony from U.S. Fish and Wildlife Service
5 later, but are you familiar with how close is this
6 particular project with the generally assumed
7 migration corridor for whooping cranes? It seems
8 to me that, if memory serves, it's a little bit to
9 the east of the -- of the general corridor; is that
10 correct?

11 A. Yeah. It's about roughly --

12 JUDGE HOBERG: Yeah, why don't you move
13 the mike back, please.

14 THE WITNESS: The project area is roughly
15 located on the eastern edge of the 200-mile
16 migration corridor -- the 200-mile-wide migration
17 corridor for whooping cranes. And, of course, as
18 the Fish and Wildlife Service might tell you, too,
19 that there's not a really hard line at the edge of
20 that migration corridor. But that 200-mile-wide
21 migration corridor includes roughly 95 percent of
22 the whooping crane observations that have been
23 recorded.

24 COMMISSIONER CLARK: Okay. Thanks.
25 That's all I have. Thank you.

1 JUDGE HOBERG: Thank you, Commissioner
2 Clark.

3 Commissioner Cramer, please.

4 COMMISSIONER CRAMER: Thank you, Your
5 Honor. Thank you, Mr. Bouta.

6 **EXAMINATION**

7 **BY COMMISSIONER CRAMER:**

8 Q. I -- a couple of -- one thing I want to
9 get clarified, I was reading the letter that you
10 received back from the U.S. Fish and Wildlife
11 Service, and I understand that Terry's probably
12 going to testify. But the date on that letter is
13 considerably earlier than a lot of the other
14 letters, and it references 100 megawatt project and
15 52 turbines. Do you remember when this was changed
16 and are they aware of that, that we're talking
17 about 150 megawatts?

18 A. They -- okay. This was changed -- and I
19 think I -- I don't remember the date of that
20 original correspondence from the U.S. Fish and
21 Wildlife Service.

22 Q. It was like in May of 2008.

23 A. Okay. And ultimately as is sometimes
24 common with wind energy projects, there -- there
25 needs to be a decision made when you go into

1 permitting of how big the wind project is actually
2 going to be. And so we submitted the original
3 application to the North Dakota PSC in October of
4 2008. The Fish and Wildlife Service commented in
5 May of 2008. I believe the decision to go to
6 150 megawatts was made in about August of 2008.
7 And it's -- the U.S. Fish and Wildlife Service is
8 aware now that it's 150 megawatts proposed. We
9 could have worked a little bit more closely with
10 them to kind of clarify some of the things in the
11 past, and we're working to clarify more of them in
12 the future.

13 Q. And thank you for that. That's my main
14 concern because I just want to make sure that
15 they're not operating under a different assumption,
16 so as long as that's clarified.

17 Also, it does seem to me that in looking
18 at the cultural and natural resource information
19 that you've provided there, there's probably a lot
20 more potential than there is existing whether, you
21 know, it's archeological sites or whatever, but my
22 question would be: During construction since we
23 are in a culturally rich part of even of a
24 culturally rich state, what -- what is the mode of
25 operation should a construction crew come across,

1 say, a burial site, for example, or a sensitive
2 cultural or natural resource?

3 A. If they were to come across something like
4 a burial site, the federal and state laws require
5 that they stop construction immediately and notify
6 the historical agency authorities.

7 Q. Then just one other question, if I might,
8 Your Honor. I noticed that one of the agencies
9 that you wrote to and who responded was the Indian
10 Affairs Commission. The Indian Affairs Commission,
11 I think, forwarded your request to the Turtle
12 Mountain Band of Chippewa preservation office.
13 Have you ever heard back from them? Because I did
14 not find correspondence.

15 A. We have not heard back from them.

16 Q. Have you had any consultation with the
17 tribe at all?

18 A. We attempted to contact them just to --
19 because we knew that they would be, for practical
20 purposes, a neighbor to the project. And so early
21 in 2007, 2008 we attempted to contact them, but we
22 did not receive a response in response to those
23 attempts, either.

24 COMMISSIONER CRAMER: Very well. I have
25 nothing further, Your Honor.

1 JUDGE HOBERG: Thank you, Commissioner
2 Cramer.

3 Commissioner Kalk, please.

4 **EXAMINATION**

5 **BY COMMISSIONER KALK:**

6 Q. Thank you for your testimony. A couple
7 questions on the -- Appendix C.4 is noise
8 assessment prepared for Towner County.

9 A. Mm-hmm.

10 Q. That's just -- I assume that's for Towner
11 as well as Rolette County. You did the whole
12 thing; right?

13 A. Well, that was specifically directed at
14 Towner County because initially the project
15 included turbines located in Towner County, and
16 Towner County had some specific noise requirement
17 language in their zoning ordinance, and so we
18 wanted to clarify that up front. So in answer to
19 your question, that assessment was an initial
20 assessment specifically prepared for Towner County
21 and was not necessarily directly applicable to
22 Rolette County. And I would consider the -- the
23 noise information that we now have more current and
24 up to date.

25 Q. So is there anything in particular that

1 led the decision process to no longer put those
2 wind turbines in Towner County? I mean what
3 prompted the decision that initially you were going
4 to put turbines there and then now there's not any
5 in Towner County?

6 A. There were a couple different things.
7 Basically, it -- well, three factors. One,
8 mitigation and avoidance of natural resource
9 impacts. Two is the extent of the project
10 footprint that making a more compact design made it
11 more -- it will be more efficient to construct so
12 that there's some things economically that work
13 more efficiently if there is fewer miles of
14 roadways, fewer miles of cables. And there is
15 actually less environmental impact when it's done
16 that way too. And then, third, when we
17 reconfigured the project layout, it also provided
18 an opportunity because it was done concurrent with
19 the avian field survey to select turbine locations
20 that were located at least a quarter mile from
21 known raptor nests.

22 Q. Okay. So the footprint maybe changed a
23 little bit. That might have been some that was
24 driving the decision?

25 A. Yeah. The footprint changed and we made

1 it more compact and we found ways to use that to
2 minimize natural resource impacts at the same time.

3 Q. Okay. Your Honor, one more question. You
4 talked a little bit about an FAA certificate. And
5 a previous question I asked was about the airport
6 zoning, and I understand that the zoning says 372
7 feet tall within that area. But my instinct tells
8 me that when they set up that zoning, it was for
9 stationary objects that didn't have a lot of
10 turbulence. We've got some wind turbines that are
11 slated right outside that area that while they are
12 not in that area, you'd think the turbulence from
13 the wind turbine could have an effect to an
14 aircraft.

15 Does that FAA certificate -- what does
16 that -- what does that provide us? Because the
17 concern that I would have is that we might be
18 meeting the local zoning for the height, but we
19 don't know the effect of the turbine turbulence as
20 the aircraft comes in.

21 A. I can't speak directly to the turbulence
22 issue, and I -- I don't know whether the Federal
23 Aviation Administration determination of no hazard
24 would address any kind of turbulence issue, either.
25 So I think --

1 Q. What is -- when the FAA gives you a
2 certificate, you must give them -- what do you give
3 them prior -- for them to review prior to -- do you
4 give them the whole package of everything?

5 A. What we give them is a turbine lighting
6 plan and -- and mapped coordinates of where the
7 turbines will be located.

8 Q. Okay.

9 A. The elevation on the ground where the
10 turbines will be located and the turbine height at
11 the tip of the blade. And that information is all
12 submitted to the Federal Aviation Administration
13 electronically and then they reply roughly in, I
14 think, 60 days -- 60 to 90 days, something like
15 that, after that submission.

16 Q. Okay. And then when will you -- you
17 submit them all your choices, even to include the
18 alternatives, I'm sure.

19 A. Yes.

20 COMMISSIONER KALK: Okay. That's all that
21 I have.

22 JUDGE HOBERG: Anything you want --
23 anything further in regard to turbulence?

24 COMMISSIONER KALK: No, I don't think so.
25 If you give them everything that it sounds like you

1 did, they would, I would assume, take that into
2 consideration and that's something that I feel
3 comfortable with if the FAA gives that certificate
4 that says no problems.

5 THE WITNESS: Okay.

6 JUDGE HOBERG: Okay. Thank you,
7 Commissioner Kalk.

8 Commissioner Clark, please.

9 COMMISSIONER CLARK: Just a real quick
10 follow-up.

11 **FURTHER EXAMINATION**

12 **BY COMMISSIONER CLARK:**

13 Q. We had a brief conversation about shadow
14 flicker when I was asking some questions, and it
15 occurred to me that we were probably talking a
16 little bit in wind energy industry jargon. And
17 just so that we have the record clear, could you
18 just describe what shadow flicker is and why,
19 generally speaking, it's something that we try to
20 avoid as --

21 A. Sure.

22 Q. -- far as impact on residences?

23 A. It's -- when the wind turbine blades move,
24 you know, and the sun's at a certain angle,
25 basically there's -- the blades pass in front of

1 the sun, there's a shadow; they -- they pass away
2 from the path of the sun, there's no shadow. And
3 so basically the shadow flickers as a result of the
4 turbine blades providing a shadow and then no
5 shadow, shadow, no shadow. So what the shadow
6 flicker analysis does is it provides a footprint
7 based on the angle of the sun where that shadow
8 flicker pattern occurs on the ground.

9 Q. Okay. Thanks. And, generally speaking,
10 residences would prefer to have less flicker than
11 more; correct?

12 A. Yeah.

13 Q. Okay.

14 A. I mean it -- I would assume that's the
15 case. I mean I haven't experienced that myself,
16 but I mean if you're having a picnic, you might
17 want to sit in the shade or the sun, but maybe not
18 both intermittently.

19 COMMISSIONER CRAMER: That's a good
20 description.

21 COMMISSIONER CLARK: Thank you.

22 JUDGE HOBERG: Thank you, Commissioner
23 Clark.

24 Any further questions, Commissioners? No.
25 Okay. Thank you.

1 Mr. Morrison, do you have any further
2 questions of Mr. Bouta?

3 MR. MORRISON: I'm going to have Mr. Bouta
4 identify one additional exhibit just to make sure
5 we have a complete record.

6 **REDIRECT EXAMINATION**

7 **BY MR. MORRISON:**

8 Q. Rob, I'll show you what we've marked as
9 Exhibit 9, and can you tell me what this is?

10 JUDGE HOBERG: Well, we already have
11 late-filed Exhibit 9, so --

12 MR. MORRISON: Okay. So we'll call this
13 10?

14 JUDGE HOBERG: 10, yeah.

15 Q. (MR. MORRISON CONTINUING) Okay.

16 A. Okay.

17 Q. I'll then remark it as Exhibit 10.

18 A. So Exhibit 10 is the response to the
19 information request on the Border Winds Energy
20 Project dated April 22, 2009, submitted to
21 Mr. Jerry Lein at the North Dakota Public Service
22 Commission. And this is a document that includes a
23 number of attachments and addresses a number of
24 clarifications that Mr. Lein of the PSC staff
25 requested.

1 MR. MORRISON: And it's primarily being
2 submitted to address some of the noise issues that
3 we talked about just to make sure we have all those
4 noise studies in the record.

5 JUDGE HOBERG: Do the Commissioners all
6 have copies of that?

7 MS. BENDISH: I believe it's Commission
8 Docket No. 12.

9 MR. MORRISON: Yes.

10 JUDGE HOBERG: Docket 12. Okay. Thank
11 you.

12 Any objection to Exhibit 10?

13 MS. BENDISH: No objection.

14 JUDGE HOBERG: Exhibit 10 is admitted.

15 MR. MORRISON: And with that I have
16 nothing further.

17 JUDGE HOBERG: Thank you, Mr. Morrison.

18 Any further questions of Mr. Bouta? Ms.
19 Bendish?

20 MS. BENDISH: No, Your Honor.

21 JUDGE HOBERG: No further questions.

22 Thank you, Mr. Bouta.

23 THE WITNESS: You're welcome.

24 JUDGE HOBERG: All right. Anything
25 further to present to the Commission, Mr. Morrison?

1 MR. MORRISON: We have nothing further at
2 this time.

3 JUDGE HOBERG: All right. Thank you.

4 I think for the benefit of the court
5 reporter, it might be a good idea to have a
6 ten-minute recess here. It looks like it's a five
7 minutes after 12. Strictly -- strictly ten
8 minutes. But before we do recess, I want to see a
9 show of hands again. The Commission has been
10 encouraging public testimony. Is anyone else -- we
11 had the one gentleman. Anyone else that wishes to
12 present today? If I could maybe see a hand. No.
13 Just the one?

14 COMMISSIONER CRAMER: We'd relish the
15 opportunity to cross-examine a legislator.

16 COMMISSIONER CLARK: It's our one and only
17 chance.

18 COMMISSIONER CRAMER: It's so rare, Merle.

19 MR. BOUCHER: You would love that.

20 JUDGE HOBERG: Okay. Sign-up sheet, has
21 everybody signed the attendance sheet? We've got
22 that there. Anybody that hasn't signed it? Maybe
23 we could pass it down to that gentleman, please.

24 Okay. We're going to finish before we
25 adjourn for lunch here. So we'll just take

1 strictly a ten-minute, back at 12:15 time we're
2 going to start again. So we'll stand in recess
3 till then.

4 (Recessed at 12:06 p.m. to 12:16 p.m.)

5 JUDGE HOBERG: Okay. Let's go back on the
6 record. We're back from a short recess.

7 We're at that point in time where the
8 Applicant has finished its presentation, and I said
9 we would take testimony from anyone in the audience
10 that wished to present information to the
11 Commission. I think we just have one person.
12 Anybody reconsider and want to present -- do we
13 have a couple more? Okay. Looks like maybe four
14 people.

15 We'll start with the gentleman who first
16 indicated -- I think that's Mr. Ellsworth. We'll
17 start with you. If you could just tell us who you
18 are, spell your name for us for the record, and
19 then give us the information.

20 But I do need to swear you in as a witness
21 first. Did you hear the admonition I gave earlier
22 in regard to perjury?

23 MR. ELLSWORTH: Yes.

24 (Witness sworn.)

25 JUDGE HOBERG: Thank you. And give us

1 your name and spell it, please.

2 MR. ELLSWORTH: Terry Ellsworth,
3 T-e-r-r-y, E-l-l-s-w-o-r-t-h.

4 JUDGE HOBERG: Thank you. Please proceed.

5 **TERRY ELLSWORTH,**
6 having been first duly sworn, was examined and
7 testified as follows:

8 **STATEMENT**

9 **BY MR. ELLSWORTH:**

10 MR. ELLSWORTH: My name obviously is Terry
11 Ellsworth. I'm a fish and wildlife biologist for
12 the U.S. Fish and Wildlife Service Ecological
13 Services Office in Bismarck, North Dakota.

14 Our office provided comments on June 18,
15 2008, to Sequoia Energy Incorporated through their
16 project consultant, Westwood Professional Services,
17 on the Border Winds Wind Energy Project.

18 The United States Congress has directed
19 the Fish and Wildlife Service and other agencies --
20 other federal agencies to administer a number of
21 environmental laws, regulations and executive
22 orders to protect the nation's fish and wildlife
23 resources, such as the Nationally Environmental
24 Policy Act, the Migratory Bird Treaty Act, the
25 Golden and Bald Eagle Protection Act, Endangered

1 Species Act, and the National Wildlife Refuge
2 System Improvement Act of 1997.

3 The Fish and Wildlife Service supports the
4 responsible development of renewable, sustainable
5 energy sources, including wind energy. However,
6 wind energy developments may present threats to
7 wildlife and their habitats.

8 In general, the wildlife resources and
9 issues that warrant consideration during project
10 planning include migratory birds and bats, the
11 potential for habitat fragmentation, collision and
12 electrocutions; federal land interests; wetland,
13 prairie, and woodland habitats; threatened and
14 endangered species; and monitoring, research, and
15 assessment.

16 The Fish and Wildlife Service routinely
17 provides technical assistance to developers to help
18 avoid, reduce and mitigate potential impacts to
19 fish and wildlife resources that may be adversely
20 affected by proposed wind development projects.

21 Our recommendations include developing a volunteer
22 avian and bat protection plan in coordination with
23 the Fish and Wildlife Service as a tool that the
24 company can use to identify problem areas through
25 mortality monitoring and reporting, outline means

1 and methods to reduce identified impacts, and
2 provide for follow-up review in an adaptive
3 management approach.

4 From the information in the September 29,
5 2009, Public Service Commission Notice of Filing
6 and Notice of Hearing, it appears that the proposed
7 Border Winds Energy Project was modified after our
8 office provided comments to the company's
9 consultant in our June 18, 2008, letter.

10 The project that we reviewed at that time
11 as described in the Westwood Professional Services'
12 request for comments consisted of a 100 megawatt
13 project and with 42 2.4 megawatt turbines in
14 Rolette and Towner Counties.

15 The PSC notice states that Sequoia Energy
16 Incorporated filed an application on October 24,
17 2008, for a certificate of site compatibility to
18 authorize construction of a 150 megawatt project
19 with 66 turbines in Rolette and Towner Counties.
20 The notice further states that the project
21 application was revised on September 25, 2009,
22 changing the project to be entirely within Rolette
23 County.

24 None of the proposed changes to the
25 project were coordinated with our office by the

1 company. Therefore, we have not had an adequate
2 opportunity to review the modified project for
3 potential impacts to fish and wildlife trust
4 resources and provide comments and recommendations
5 to help avoid and minimize any potential impacts.

6 On October 30, 2009, our office received
7 an e-mail with an updated project map and a
8 September two-thousand -- I'm sorry, a
9 September 24, 2009, preconstruction avian survey
10 and risk assessment attached. The avian survey
11 included information for a ten-week period from
12 April 3 to June 2, 2009.

13 The conclusions of the survey and risk
14 assessment indicate that the proposed project area
15 has high waterfowl and raptor use compared to other
16 wind farms that have been studied. This study and
17 the results were not coordinated with our office
18 which would have allowed for our input to assist
19 the project developer to avoid and minimize avian
20 fatalities to the maximum extent practicable
21 through project macrositing or operations.

22 Specific to the Migratory Bird Treaty Act,
23 the Fish and Wildlife Service has developed the
24 following policy. The Migratory Bird Treaty Act
25 prohibits the taking, killing, possession,

1 transportation, and importation of migratory birds,
2 their eggs, parts, and nest except when
3 specifically authorized by the Department of
4 Interior. While the Act has no provision for
5 unintentional take, the Fish and Wildlife Service
6 realizes that some birds may be killed by wind
7 turbines or power lines, even if all reasonable
8 measures to protect them are used.

9 The Fish and Wildlife Service office of
10 law enforcement carries out its mission to protect
11 migratory birds through investigations and
12 enforcements, as well as by fostering relationships
13 with individuals, companies and industries that
14 have taken effective steps to minimize their
15 impacts on migratory birds and by encouraging
16 others to enact such programs.

17 It is not possible to absolve individuals,
18 companies or agencies from liability even if they
19 implement avian mortality avoidance or similar
20 conservation measures. However, the office of law
21 enforcement focuses its resources on investigating
22 and prosecuting individuals and companies that take
23 migratory birds without regard for their actions or
24 without following recommendations to avoid take.

25 Because the project has been planned

1 without our full involvement, any take of migratory
2 birds, their eggs or active nests due to
3 construction or operation of this project is
4 considered by the Fish and Wildlife Service as not
5 having met the burden of the policy cited above.

6 Thank you for the opportunity to provide
7 testimony on the Border Winds Energy Project.

8 I would like to submit my testimony to the
9 record.

10 JUDGE HOBERG: That you just read?

11 MR. ELLSWORTH: Yes.

12 JUDGE HOBERG: Well, we have it. I mean
13 it --

14 MR. ELLSWORTH: Well, I know, but I would
15 like to submit the written.

16 JUDGE HOBERG: Okay. Okay. We can take
17 that as Exhibit 11. Why don't you give it to the
18 court reporter to mark it, please.

19 (Exhibit 11 was marked for
20 identification.)

21 JUDGE HOBERG: Okay. Mr. Ellsworth, maybe
22 I missed it, but you're testifying in your official
23 capacity with Fish and Wildlife; correct?

24 MR. ELLSWORTH: Yes, sir.

25 JUDGE HOBERG: And what -- what is your

1 capacity again as?

2 MR. ELLSWORTH: I'm a fish and wildlife
3 biologist with the Ecological Services Field
4 Office.

5 JUDGE HOBERG: Thank you. Okay.

6 Mr. Morrison, do you have any questions --
7 well, let me first say he's offered Exhibit 10,
8 which is essentially his testimony that he just
9 gave. Is there any objection?

10 MR. MORRISON: Exhibit 11.

11 JUDGE HOBERG: Exhibit 11. Exhibit 11.
12 Any objection to Exhibit 11, Mr. Morrison?

13 MR. MORRISON: No objection.

14 JUDGE HOBERG: Ms. Bendish?

15 MS. BENDISH: No, Your Honor.

16 JUDGE HOBERG: Exhibit 11 is admitted
17 then.

18 Mr. Morrison, do you have any questions of
19 Mr. Ellsworth?

20 MR. MORRISON: Just one or two.

21 **CROSS-EXAMINATION**

22 **BY MR. MORRISON:**

23 Q. Mr. Ellsworth, is it correct that you do
24 have a scheduled session in the field tomorrow,
25 either you or somebody else with Fish and Wildlife

1 Service, with the representatives of the project?

2 A. Yes, sir.

3 Q. And so they are continuing to work with
4 you; is that correct?

5 A. Yes.

6 MR. MORRISON: No further questions.

7 JUDGE HOBERG: Thank you, Mr. Morrison.

8 Ms. Bendish, do you have any questions of
9 Mr. Ellsworth?

10 MS. BENDISH: No, Your Honor.

11 JUDGE HOBERG: Mr. Lein?

12 MR. LEIN: I'm wondering if we should ask
13 for a late-filed exhibit from Mr. Ellsworth with
14 any changes that he would make to his letter that
15 was submitted previously for the previous project.
16 Is that something we can ask for?

17 JUDGE HOBERG: You mean like after --
18 after further consultation with Sequoia?

19 MR. LEIN: Yeah. If he would like to
20 update the letter that he sent in response to the
21 agency letter that was sent to them in the first
22 place.

23 JUDGE HOBERG: Mr. Ellsworth?

24 MR. ELLSWORTH: Well, we haven't had a
25 chance to review the updated project yet. We just

1 received the information last week, and we're going
2 to do a field review tomorrow to look at the -- the
3 site. We certainly could provide additional
4 comments and information for the record if --

5 JUDGE HOBERG: I think in light of your
6 testimony, I think Mr. Lein's request or question
7 is well-taken. Perhaps we should have a late-filed
8 exhibit from the Fish and Wildlife Service after
9 further review and consultation with Sequoia. Can
10 you do that?

11 MR. ELLSWORTH: Yes.

12 JUDGE HOBERG: And we'll leave that up, I
13 think, to Ms. Bendish and Mr. Morrison to
14 coordinate and file -- we'll call that for the
15 record late-filed Exhibit 12.

16 Okay. Thank you. Anything further, Mr.
17 Lein?

18 MR. LEIN: No thanks. No, sir.

19 JUDGE HOBERG: Thank you, Mr. Lein.

20 Commissioner Clark, please.

21 COMMISSIONER CLARK: Just one.

22 **EXAMINATION**

23 **BY COMMISSIONER CLARK:**

24 Q. And I agree. I think that would be
25 helpful. The Commission's in a little bit of an

1 odd spot in that U.S. Fish and Wildlife Service
2 doesn't, you know, approve or deny or reject a
3 project, but, really, it's more information for the
4 Commission and then ultimately perhaps liability
5 issues for the developer themselves.

6 But nonetheless, given -- given the fact
7 that you hadn't had the opportunity to view the
8 updated project, I think we'd find that helpful.
9 So I would agree that we should at least hold it
10 open until we can get that information on the
11 record.

12 My question would be: What would it take
13 for Sequoia to get up to that level of having
14 some -- I don't know if "protection" is the right
15 word, but you indicated towards the end of your
16 testimony that at least now you wouldn't be able to
17 give them -- what's the right word -- the benefit
18 of the doubt if there was a taking, something like
19 that. What does it take to get up to that level of
20 liability protection --

21 A. Well, the --

22 Q. -- understanding that they can't have
23 total protection?

24 A. Right. The office of law enforcement
25 looks at it as a discretion of which enforcement

1 actions they pursue. And, again, because we
2 understand that there will be mortalities and the
3 Migratory Bird Treaty Act has no provisions, we
4 can't give a permit to allow take. If a company is
5 working with the Fish and Wildlife Service and
6 they're looking at all measures to minimize --
7 first avoid and then minimize any kind of
8 incidental take of migratory birds, that the office
9 of law enforcement looks at that as the company --
10 there's nothing more we could ask them to do except
11 not build your project, and that's not -- our focus
12 here is not to stop the project. It's to make sure
13 the project gets developed in the most responsible
14 manner possible to minimize those impacts to
15 migratory birds.

16 Q. Okay. So the meeting tomorrow, the
17 fieldwork tomorrow is the first step towards that
18 sort of success?

19 A. That's correct. That's correct. We just
20 really encourage developers to work with the Fish
21 and Wildlife Service and with particularly the
22 Ecological Services Office because we have the
23 responsibility to make sure that these laws are
24 administered and that companies and developers --
25 for one thing it's an educational thing. We want

1 everyone to be aware of the laws. And if we feel
2 there's a chance that they could be in violation,
3 we want to make sure they know that and to provide
4 technical assistance to them to try to avoid
5 anybody being crosswise with the law.

6 Q. Sure. And in Sequoia's application they
7 talk about a proposed buffer from wildlife
8 production areas and wildlife rest areas of a
9 quarter mile. Is that a typical type of setback
10 for developments like this --

11 A. No.

12 Q. -- or is there anything that can be
13 considered typical?

14 A. Well, from the Fish and Wildlife Service
15 standpoint, the setback from waterfowl production
16 areas, we only have -- those are fee title lands
17 that the service owns and our jurisdiction goes to
18 the boundary. If a company wanted to build one
19 100 feet away, I don't know that we could stop
20 them.

21 The quarter-mile setback is probably
22 reasonable because these areas are set aside for
23 waterfowl production. The chances are there are a
24 lot of birds there. The study that was provided to
25 us indicates there are a lot of waterfowl on this

1 area because of the amount of wetlands in the area.
2 So probably setbacks from wetlands and from WPAs is
3 a reasonable thing. It's not something that the
4 service would require.

5 COMMISSIONER CLARK: Okay. Thank you.

6 JUDGE HOBERG: Thank you, Commissioner
7 Clark.

8 Commissioner Cramer, please.

9 COMMISSIONER CRAMER: I have nothing for
10 this witness except my appreciation.

11 JUDGE HOBERG: Thank you, Commissioner
12 Cramer.

13 Commissioner Kalk.

14 COMMISSIONER KALK: Just a short one.

15 **EXAMINATION**

16 **BY COMMISSIONER KALK:**

17 Q. Thanks for testifying, too, Terry. And
18 just, you know, background. When becomes the
19 limiting factor where you can get out and do some
20 of the work you have to do for the fieldwork? I
21 mean obviously it's November and we're blessed,
22 there's not two feet of snow on the ground. But I
23 mean there's got to be some breakpoint. Is it when
24 the snow falls on the ground you can't do much more
25 out there? Or how do you assess what you can

1 actually do to follow up on what you're going to
2 need to survey?

3 A. Well, the survey work, we ask companies to
4 look at the information they gather on avian
5 resources, bats, any kind of wildlife resources
6 that are out there, wetlands, to use that
7 information in siting their wind farm. So we
8 encourage wind company developers before they ever
9 get easements to look at those resources on the
10 ground and try to site their -- their projects so
11 that they've -- they've avoided those impacts to
12 the greatest extent possible.

13 Once the project's selected, it's much
14 harder to avoid those impacts. Then you're just
15 kind of minimizing any potential impacts by
16 avoiding wetlands and those types of issues.

17 In order for the survey work to be a
18 useful tool, it would need to be much longer term.
19 This was a one -- a ten-week survey, and it
20 provides a snapshot of what's out there during that
21 ten-week window.

22 In many cases you could get that from
23 looking at breeding bird surveys. The information
24 to go out on the ground is not necessary really to
25 gather that type of information. What would be

1 useful would be a couple of years before the
2 project to see what's there, the project gets
3 built, and then two or three years of survey
4 afterwards to see if are those birds that were
5 there prior to the project now no longer using it
6 or are they still using it? That would be useful
7 information for siting future projects, for one
8 thing. It also would -- would confirm some of the
9 potential impact assessments that are done.

10 To say there's this -- these species are
11 out there and there's this many at this one period
12 of time is not -- unless it's used to adjust your
13 project and you say, well, there's -- there's too
14 much impact on this site so we're going to look at
15 this site, that's -- that's kind of our -- been our
16 focus, is looking at more either a long-term study
17 that can show some trends or to use that -- those
18 snapshots as you look at three or four different
19 sites and then try to pick one that has the least
20 impact.

21 COMMISSIONER KALK: Okay. Thank you.

22 JUDGE HOBERG: Thank you, Commissioner
23 Kalk.

24 Any further questions of Mr. Ellsworth?

25 No further questions. Thank you, Mr. Ellsworth.

1 MR. ELLSWORTH: Thank you.

2 JUDGE HOBERG: All right. I think we had
3 a few more people that -- sir, come on up. And
4 your name, sir, for the record?

5 MR. MITCHELL: Scott Mitchell, mayor of
6 Rolla.

7 JUDGE HOBERG: M-i --

8 MR. MITCHELL: M-i-t-c-h-e-l-l.

9 JUDGE HOBERG: Thank you. And did you
10 hear the admonition I gave earlier?

11 MR. MITCHELL: Yes, I did.

12 (Witness sworn.)

13 JUDGE HOBERG: Thank you. Please proceed.

14 **SCOTT MITCHELL,**

15 having been first duly sworn, was examined and
16 testified as follows:

17 **STATEMENT**

18 **BY MR. MITCHELL:**

19 MR. MITCHELL: I just want to stress the
20 importance of this project to the County of
21 Rolette.

22 Rolette County, if you look at any state
23 surveys, is a low-income county. Projects such as
24 this have the potential to benefit all the
25 communities in the county. And I think you'll find

1 the vast majority of the residents of this county
2 in favor of this project.

3 JUDGE HOBERG: Thank you. Any questions
4 of Mr. Mitchell? Mr. Morrison?

5 MR. MORRISON: No.

6 JUDGE HOBERG: Ms. Bendish?

7 MS. BENDISH: No, Your Honor.

8 JUDGE HOBERG: Commissioners, any
9 questions?

10 COMMISSIONER CRAMER: Just thank you.

11 COMMISSIONER CLARK: Thank you.

12 COMMISSIONER KALK: Judge, I've got one
13 question for him.

14 JUDGE HOBERG: Okay. Commissioner Kalk.

15 **EXAMINATION**

16 **BY COMMISSIONER KALK:**

17 Q. Mayor, I need to clear the record up.
18 Earlier in my comments I talked about Rolla playing
19 in the football game, and you corrected me during
20 the break. Could you just let the record show
21 what's playing in the --

22 A. North Prairie --

23 Q. North Prairie.

24 A. -- is playing Langdon in the playoffs.

25 North Prairie is a football coop made up of the

1 communities of Rock Lake, Rolla, Rolette and
2 Wolford.

3 COMMISSIONER KALK: That's all I have.

4 MR. MITCHELL: The North Prairie Cougars.

5 COMMISSIONER CRAMER: Are they still the
6 Bull Dogs or what --

7 MR. MITCHELL: They are the Cougars.

8 COMMISSIONER CRAMER: Oh, for Pete's sake.

9 JUDGE HOBERG: Thank you, Mayor.

10 MR. MITCHELL: And all the communities
11 have always had successful football programs, and
12 combined they are very good. So thank you.

13 COMMISSIONER KALK: Thank you.

14 JUDGE HOBERG: Thank you very much.

15 And we had, I think, a couple more. Yes,
16 sir.

17 MR. LEONARD: My name is Bob Leonard,
18 L-e-o-n-a-r-d, Rolette County Commissioner.

19 JUDGE HOBERG: And did you hear the
20 admonition I gave earlier? I need to swear you in.
21 It's just part of the formality.

22 MR. LEONARD: Yeah.

23 (Witness sworn.)

24 JUDGE HOBERG: Thank you. Please proceed.
25

1 **BOB LEONARD,**

2 having been first duly sworn, was examined and
3 testified as follows:

4 **STATEMENT**

5 **BY MR. LEONARD:**

6 MR. LEONARD: Mr. -- Mayor Mitchell just
7 took a lot of the words out of my mouth, what I was
8 going to say. The economic impact of this county
9 with this project is going to be -- we're really
10 looking forward to it. And Sequoia has been really
11 up front with us as far as a county, keeping us
12 informed and we really appreciate that.

13 And like I say, we are looking forward to
14 this project, and I guess that's all I have to say.

15 JUDGE HOBERG: Thank you, Mr. Leonard.

16 Mr. Morrison, anything?

17 MR. MORRISON: Nothing.

18 JUDGE HOBERG: Ms. Bendish?

19 MS. BENDISH: No, Your Honor.

20 JUDGE HOBERG: Thank you. Commissioners?

21 COMMISSIONER CRAMER: Just thank you.

22 COMMISSIONER KALK: Thank you.

23 JUDGE HOBERG: Thank you very much, sir.

24 MR. LEONARD: Thank you.

25 JUDGE HOBERG: I think we had one more

1 person.

2 MS. MCCLOUD: Valerie McCloud,

3 M-c-C-l-o-u-d. And I --

4 JUDGE HOBERG: I need to swear you in

5 first.

6 MS. MCCLOUD: Sure.

7 JUDGE HOBERG: Did you hear the admonition
8 I gave earlier in regard to perjury?

9 MS. MCCLOUD: Yes, I did.

10 (Witness sworn.)

11 JUDGE HOBERG: Thank you. Please proceed.

12 **VALERIE MCCLOUD,**

13 having been first duly sworn, was examined and

14 testified as follows:

15 **STATEMENT**

16 **BY MS. MCCLOUD:**

17 MS. MCCLOUD: I'm the Rolette County
18 auditor. We have been working on this project for
19 about five years. I was one of the initial ones
20 along with George and a lot of other people in the
21 county -- city and county that was very interested
22 in a possibility of a wind project in the county.

23 I see this as a very beneficial thing for
24 our county, not only the economic impact for the
25 jobs and whatnot, the landowners, all provide the

1 county for the tax dollars that will come in. It
2 would increase our taxable valuation a sizable
3 amount, and that is a very much financial benefit
4 for the county. So we definitely look forward to
5 it.

6 JUDGE HOBERG: Thank you.

7 Mr. Morrison, any questions?

8 MR. MORRISON: No questions.

9 JUDGE HOBERG: Ms. Bendish?

10 MS. BENDISH: No, Your Honor.

11 JUDGE HOBERG: Commissioners?

12 COMMISSIONER CRAMER: You know, I --

13 JUDGE HOBERG: Commissioner Cramer,

14 please.

15 COMMISSIONER CRAMER: I might, Your Honor.

16 **EXAMINATION**

17 **BY COMMISSIONER CRAMER:**

18 Q. Auditor McCloud, just -- you referenced
19 tax -- tax valuations.

20 A. Yes.

21 Q. The -- there's a lot of talk -- has been a
22 lot of talk, a lot of debate, a lot of discussion,
23 a lot of decisions and some uncertainty about the
24 value of state sort of support for property tax
25 relief. How significant is this in terms of

1 property tax relief for your county?

2 A. For this project?

3 Q. Yes.

4 A. When we had done estimates about a year
5 ago, we estimated -- and I don't know if it's
6 still -- you know, there's variables that get
7 included, the value -- or the cost of the tower is
8 one, the size of the tower, all that stuff comes
9 into play. But we had kind of estimated about
10 1.5 million as far as the turbines an increase in
11 taxable valuation. And when our taxable valuation
12 is only 10 million to start with, I think that's a
13 sizable amount. So positive.

14 COMMISSIONER CRAMER: I have nothing
15 further. Thank you.

16 JUDGE HOBERG: Thank you. Anything
17 further? Wait a second. Just a second. Did we
18 get all the questions? I wasn't sure. Thank you
19 very much. I'm sorry.

20 All right. Anyone else that wishes to
21 testify? Yes, sir.

22 MR. ALBERT: Alex Albert, Job Service
23 North Dakota.

24 JUDGE HOBERG: A-l-b-e-r-t?

25 MR. ALBERT: Correct.

1 JUDGE HOBERG: Did you hear the admonition
2 I gave earlier in regard to perjury?

3 MR. ALBERT: I did.

4 (Witness sworn.)

5 JUDGE HOBERG: Thank you. Please proceed.

6 **ALEX ALBERT,**

7 having been first duly sworn, was examined and
8 testified as follows:

9 **STATEMENT**

10 **BY MR. ALBERT:**

11 MR. ALBERT: Hi. I just want to echo
12 everyone else's comments.

13 As the Job Service manager here in Rolla,
14 I can tell you that Rolette County is one of the
15 counties in the State of North Dakota that has an
16 extremely high unemployment rate. The most recent
17 figure that my organization publishes is the
18 September 2009 unemployment rate for Rolette County
19 is set at 9.7 percent. That is three times the
20 state average, which is around 3.2 percent
21 currently.

22 To the west of the county and the central
23 part of the county, Belcourt, North Dakota, is the
24 Turtle Mountain Indian Reservation. As you all
25 know, the unemployment rate as stated by the Bureau

1 of Indian Affairs there is 66.4 percent.

2 Needless to say, the impact of the jobs of
3 this project would positively impact the economic
4 posture of this community and the communities
5 around, within county -- within the county.

6 And I just wanted to reiterate how
7 important a project of this magnitude is to all of
8 us here.

9 JUDGE HOBERG: Thank you, Mr. Albert.

10 Mr. Morrison, any questions of Mr. Albert?

11 MR. MORRISON: No questions, Your Honor.

12 JUDGE HOBERG: Ms. Bendish?

13 MS. BENDISH: No, Your Honor.

14 JUDGE HOBERG: Commissioners?

15 Commissioner Cramer, please.

16 COMMISSIONER CRAMER: Yeah. Thank you.

17 **EXAMINATION**

18 **BY COMMISSIONER CRAMER:**

19 Q. You heard me ask earlier of
20 Mr. Witherspoon about the use of local labor and
21 contractors and whatnot, and he talked a little bit
22 about obviously the qualifications, skill sets,
23 things like that. Has Job Service or have you done
24 any sort of analysis of what opportunities there
25 might be at least through the construction phase

1 for the skill sets that would match the --
2 especially that 9.7 percent?

3 A. Yeah. The skill sets are done by my
4 agency on occasion, and the Turtle Mountain
5 Reservation and Rolette County as a whole have been
6 surveyed through -- through the assistance of the
7 Bureau of Indian Affairs and the Turtle Mountain
8 Tribe.

9 What I can tell you is that the
10 construction nature -- the skills in the
11 construction area in Rolette County is phenomenal.
12 We have a large, large surplus of seasoned --
13 seasoned professionals in the construction trades,
14 specifically welding, specifically heavy equipment,
15 both road construction as well as building
16 construction. This is the area that I feel will --
17 will really add to the labor force in this
18 particular project.

19 Rolette County is one of only four
20 counties in the State of North Dakota that's a
21 labor surplus area as designated -- as designated
22 by the Department of Labor. So this is really a
23 good sign for a company to come in and get some
24 local labor that -- that will stay with them. And
25 we're going to be a little short with the

1 technicians. However, there's -- Lake Region
2 College has a course, and I know that the Iberdrola
3 project out in Rugby is also training and working
4 with them to train their people. So I've been
5 involved in that project as well.

6 JUDGE HOBERG: I'm sorry. What project
7 was that in Rugby?

8 MR. ALBERT: The -- it's called Iberdrola.

9 JUDGE HOBERG: Could you spell that?

10 MR. ALBERT: They're the owners of the
11 windmill project in Rugby.

12 JUDGE HOBERG: Okay. Thank you.
13 Commissioner Cramer?

14 COMMISSIONER CRAMER: Nothing further.
15 Thank you. That's very interesting.

16 JUDGE HOBERG: Any further questions of
17 Mr. Albert?

18 COMMISSIONER CLARK: No.

19 JUDGE HOBERG: Thank you, Mr. Albert.

20 Do we have one more?

21 MR. YOUNGERMAN: One more, please. Good
22 afternoon. George Youngerman, Y-o-u-n-g-e-r-m-a-n.

23 JUDGE HOBERG: And did you hear the
24 admonition I gave earlier in regard to perjury?

25 MR. YOUNGERMAN: I did.

1 (Witness sworn.)

2 JUDGE HOBERG: Thank you. Please proceed.

3 **GEORGE YOUNGERMAN,**

4 having been first duly sworn, was examined and
5 testified as follows:

6 **STATEMENT**

7 **BY MR. YOUNGERMAN:**

8 MR. YOUNGERMAN: Thank you. This has been
9 a project of mine that we initiated. We first went
10 operational with our metering tower back in August
11 of 2003. It was at a point in time that
12 Mr. Witherspoon and I made contact about a year or
13 so later.

14 And I will greatly -- I'm greatly pleased
15 with the quality of the people of Sequoia Energy.
16 They have been very responsive, responsible and
17 considerate of everything that we have done up to
18 this point and nothing but pleased with -- with the
19 project's progress.

20 One of the things that we -- we have cited
21 before, the economic benefit, and one of the things
22 that we greatly -- that we have a lot of issues
23 with is our geographical location and the
24 opportunity for economic growth in our area. And
25 so we're very excited about this project, not only

1 what it can do for Rolette County, but for all the
2 communities in the county and the overflow that it
3 might have into the neighboring counties as well.

4 Sequoia Energy has requested that I
5 provide and I'm in the process of building an
6 informational file to use as many local
7 contractors, suppliers of product and/or services,
8 and I'm in the process of doing that now. And I
9 have individuals from the immediate area who I will
10 be making available to Sequoia Energy for possible
11 contracting with.

12 And so with that, we're very pleased to
13 have you here today. We're very pleased that we
14 got to this point after six years plus.

15 So thank you.

16 JUDGE HOBERG: Thank you, Mr. Youngerman.
17 Are you -- are you speaking in your individual
18 capacity or representing --

19 MR. YOUNGERMAN: In my capacity as the
20 director of the Job Development -- the Rolla Job
21 Development Authority. Thank you.

22 JUDGE HOBERG: Thank you.

23 Mr. Morrison, any questions of
24 Mr. Youngerman?

25 MR. MORRISON: No questions.

1 JUDGE HOBERG: Ms. Bendish?

2 MS. BENDISH: No, Your Honor.

3 JUDGE HOBERG: Thank you. Commissioners,
4 any questions of Mr. Youngerman?

5 COMMISSIONER CLARK: No. Thank you.

6 COMMISSIONER KALK: I would have one
7 question.

8 JUDGE HOBERG: Commissioner Kalk, please.

9 **EXAMINATION**

10 **BY COMMISSIONER KALK:**

11 Q. Just a -- when you talk about director of
12 job development, you know, we're trying to -- the
13 state -- I used to work at the university system,
14 too, but the state's trying to meet the
15 universities to put out, you know, the skill set
16 that we need throughout the state. Just what kind
17 of interface do you have with like the Lake Regions
18 and the Bottineaus and the Minot States about the
19 training opportunities back and forth for
20 education?

21 A. Interesting question because early on I
22 worked with Dr. Sharon Etemad, who was president of
23 Lake Region State College a number of years ago,
24 and it was through those discussions and subsequent
25 follow-on by Vice President Doug Darling that they

1 were successful in getting the program that they
2 have now for Lake Region College. And so extensive
3 involvement with that.

4 COMMISSIONER KALK: Okay. Thank you.

5 JUDGE HOBERG: Thank you, Commissioner
6 Kalk.

7 Any further questions of Mr. Youngerman?

8 COMMISSIONER CRAMER: No. Just thank you
9 for doing it, George, and for taking it upon
10 yourselves to provide the information that was
11 valuable to the company that ultimately made an
12 investment because that proactivity obviously has
13 paid off and will pay off, so way to go. And then
14 also thank you for your hospitality. And if I have
15 one more cup of that strong coffee, my legs are
16 going to get very weak.

17 MR. YOUNGERMAN: I hope it lasts you well
18 to Williston.

19 COMMISSIONER CRAMER: It should get me
20 there.

21 JUDGE HOBERG: Thank you, Commissioner
22 Cramer. Thank you, Mr. Youngerman.

23 MR. YOUNGERMAN: Thank you.

24 JUDGE HOBERG: Anyone else? Yes, sir.

25 MR. MEARS: Todd Mears, M-e-a-r-s.

1 JUDGE HOBERG: Mr. Mears, did you hear the
2 admonition I gave earlier in regard to perjury?

3 MR. MEARS: Yes.

4 (Witness sworn.)

5 JUDGE HOBERG: Thank you. Please proceed.

6 **TODD MEARS,**

7 having been first duly sworn, was examined and
8 testified as follows:

9 **STATEMENT**

10 **BY MR. MEARS:**

11 MR. MEARS: I'm a member of the local job
12 development authority, as well as a city council
13 member and a business owner in town. So you choose
14 which one I'm going to speak on the capacity of. I
15 think it kind of entails all three.

16 I remember back in 2003 when we decided to
17 put up the wind metering tower. As you are
18 probably aware the difficulties that small towns in
19 rural America have in recruiting businesses,
20 getting young families to move back in order to
21 have a striving -- thriving community. It's
22 important for us to see this finally come to this
23 point in six years. It's hard to control the
24 enthusiasm and excitement that we do have. Again,
25 I'll speak on behalf of myself, not my constituents

1 on my boards, but it's a very exciting time.

2 And one other thing I'd like to echo is
3 what George said about Sequoia Energy. The job
4 development we've been involved with is from step
5 one. A lot of our meetings may have been in the
6 preliminary and introductory standpoints of that,
7 and as it got more detailed, you know, it phased us
8 out, so to speak, with the exception of some
9 updates.

10 My impression of Sequoia Energy has been
11 they've always been personable, they've always been
12 honest, up front. They never tell you what you
13 want to hear. They don't make false promises, in
14 my opinion. And I -- I say that because so often
15 you hear these stories of -- horror stories, so to
16 speak, of larger companies coming in and only
17 worrying about what's best for them and what's
18 going to make them a dollar.

19 They've really been conscious, I think, of
20 the project, the community, the landowners, and
21 that's been their biggest concern to this point.
22 And I have no doubt that's how it will be going
23 forward through the project. I do see them as a
24 huge asset moving into the -- into the community
25 for the well foreseen feature.

1 So thank you.

2 JUDGE HOBERG: Thank you, Mr. Mears.

3 Mr. Morrison, any questions?

4 MR. MORRISON: No questions.

5 JUDGE HOBERG: Ms. Bendish?

6 MS. BENDISH: No, Your Honor.

7 JUDGE HOBERG: Commissioners?

8 COMMISSIONER CRAMER: Just thank you.

9 COMMISSIONER CLARK: No. Thank you.

10 COMMISSIONER KALK: Thank you.

11 JUDGE HOBERG: Thank you very much,

12 Mr. Mears.

13 Anyone else? I want to thank the audience
14 members for their participation.

15 At this time I'm going to ask Mr. Morrison
16 if he has anything further to present to the
17 Commission, rebuttal or otherwise.

18 MR. MORRISON: No further case. We would
19 like to make a short statement, but no further
20 evidence.

21 JUDGE HOBERG: All right. I'd just remind
22 you that -- what do we have? We have the
23 late-filed Exhibit 9 regarding the shadow flicker
24 and then we have the late-filed Exhibit 12 that
25 you'll be coordinating -- well, you'll be

1 coordinating both of them with Ms. Bendish -- with
2 Fish and Wildlife Service also on Exhibit 12.

3 All right. Please, this is the opening
4 statement -- or I'm sorry, the closing statement
5 Mr. Morrison is giving in regard to his
6 application.

7 MR. MORRISON: And I'll be very brief. We
8 appreciate the Commission's hospitality today and
9 the opportunity to be here and appear before you.
10 We appreciate staff's time also.

11 We're also very aware and greatly
12 appreciative of the support we get from the local
13 community here. It means a lot to the company and
14 has enabled them to proceed with this project.

15 I think the record is pretty clear that
16 this is a good, clean project that has very few
17 problems. We understand the concerns of Fish and
18 Wildlife Service, and we are committed to working
19 with Fish and Wildlife Service and address those
20 problems and hopefully either eliminate them or at
21 least satisfy them or minimize them.

22 We'll also provide the flicker survey that
23 the staff and Commissioners have requested. With
24 that we think the record is clear that this project
25 will have minimal adverse effects on the

1 environment and that it is compatible with
2 environmental preservation and the efficient use of
3 resources and should be approved.

4 And if there are any questions, we'd try
5 to answer them again. And, otherwise, thank you
6 again.

7 JUDGE HOBERG: Thank you, Mr. Morrison.

8 Any questions from the Commissioners in
9 regard to closing statements?

10 All right. Then we talked a little bit
11 about this at the break, at the recess that Sequoia
12 will be filing proposed findings of fact and
13 conclusions of law. We left the date somewhat open
14 to coordinate with the late-filed exhibits.

15 So with that, we're going to close the
16 hearing with comments from the Commissioners.
17 Closing comments from the Commissioners starting
18 with Commissioner Clark, please.

19 COMMISSIONER CLARK: Well, just thank you
20 for your attendance here today. I think back, you
21 know, when we scheduled this a few months ago, we
22 knew that it would be 50 degrees and sunny the
23 first week in -- in November in North Dakota. I
24 can -- I can say that to Sequoia because they're
25 from Winnipeg and they know I'm lying when I say

1 we've got -- we've got a few wind developers in the
2 state that are from Florida, and so they might not
3 know the joke there.

4 I especially want to thank all of those
5 who testified here today and for the strong turnout
6 from the community and the strong words of support
7 from -- from community leaders who spoke to us.

8 Generally speaking, in North Dakota people
9 are very favorable towards wind development, and
10 that's certainly what we've seen here today. So we
11 like getting that kind of information on the record
12 because while generally our hearings are very much
13 like this, every now and then there are folks
14 who -- who do have things that they want to bring
15 to the Commission -- Commission's attention when
16 they may not be as favorable towards wind
17 development for one reason or another, and we
18 always want to hear those sorts of words too. But
19 when we have a hearing like this where there's
20 clearly pretty strong support within the community,
21 that is helpful to us in our decision-making
22 process.

23 So I thank you for the testimony, thank
24 the Applicant for putting together a good record
25 that the Commission will have to act on. And, of

1 course, as always, thank you for the hospitality.
2 All the -- all the talk about ducks and wetlands
3 had me daydreaming here a little bit that -- in
4 thinking that while I always enjoy coming to this
5 part of the state, the next time I'm here I'm
6 hoping it's in hip waders and camouflage.

7 JUDGE HOBERG: Thank you, Commissioner
8 Clark.

9 Commissioner Cramer, please.

10 COMMISSIONER CRAMER: The next time I come
11 up here it will probably be for a wedding or a
12 funeral. But let me, too, say thank you for the
13 incredible turnout today by the public. Thank you
14 certainly to the company for a very good and
15 thorough record. We appreciate that. And I'm
16 completely confident that the issues with the Fish
17 and Wildlife Service will be worked out to --
18 hopefully to everyone's satisfaction.

19 But, you know, as I sat here and
20 especially listening to Mr. Albert, I think about
21 the fact that we live in a country that has nearly
22 10 percent unemployment. We sit in a tower in
23 Bismarck kind of with the belief that all's well in
24 North Dakota. And so when we're told about an
25 unemployment rate of nearly 10 percent in one of

1 our own communities, one of our own counties,
2 George, it's kind of special to think that we get
3 to be part of the solution.

4 And, you know, in North Dakota we've
5 always had what America wants, haven't we? We're
6 very used to exporting food to hungry people in the
7 country and the world and creating some economic
8 opportunity for ourselves. My wife oftentimes
9 accuses me of being overly sentimental and too
10 nostalgic, and sometimes perhaps I am, but I try to
11 look forward as well. And so we see this
12 opportunity while we protect our environment and
13 our cultural resources appropriately and look out
14 for people, we also see economic opportunities.

15 So it's exciting to be part of now this
16 new generation of energy development and economic
17 opportunity and have yet another resource that is
18 marketable outside of our borders.

19 And one thing I was reminded of today as
20 I'm reminded that people in Rolla get along well
21 with Canadians. I had forgotten that.

22 So thank you all for being here.

23 JUDGE HOBERG: Thank you, Commissioner
24 Cramer.

25 Commissioner Kalk, please.

1 COMMISSIONER KALK: Tough act to follow.
2 But just thank you so much for taking the time to
3 put this together. And as Kevin said, you know,
4 North Dakota, we're the only state that had job
5 growth this last quarter. We've got money in the
6 bank, and it's because of people like you that are
7 willing to work hard to get projects off the ground
8 and to make things happen.

9 So thank you so much for you do -- for
10 what you do. And I'll be back up here at noon on
11 Friday for opening deer, so if you see somebody
12 west of here, stop by and say hello.

13 JUDGE HOBERG: Thank you, Commissioner
14 Kalk.

15 COMMISSIONER CLARK: That's your fair
16 warning. Wear orange.

17 JUDGE HOBERG: All right. Thank you all
18 for your participation. We're going to close the
19 record now. It's approximately 12:55. The hearing
20 is closed.

21 (Concluded at 12:56 p.m. the same day.)

22 -----

23

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25

1 CERTIFICATE OF COURT REPORTER

2
3 I, Stephanie A. Smith, a Registered
4 Professional Reporter,

5 DO HEREBY CERTIFY that I recorded in
6 shorthand the foregoing proceedings had and made of
7 record at the time and place hereinbefore
8 indicated.

9 I DO HEREBY FURTHER CERTIFY that the
10 foregoing typewritten pages contain an accurate
11 transcript of my shorthand notes then and there
12 taken.

13 Dated at Bismarck, North Dakota, this 16th
14 day of November, 2009.

15
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17 -----
18 Stephanie A. Smith
19 Registered Professional Reporter
20
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22
23
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